

Can EU trade arrangements improve labour conditions in third countries?

Dissertation submitted by Deborah Martens in partial fulfilment of the requirements for the combined degree of 'Doctor of Political Sciences' and 'Doctor of Applied Biological Sciences: Rural Development'

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to Jacqueline & Jade

Never doubt that a small group of thoughtful, committed citizens can change the world;
indeed, it's the only thing that ever has.

Margaret Mead

If the misery of the poor be caused not by the laws of nature,
but by our institutions, great is our sin.

Charles Darwin

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Summary

Trade, the practice of exchanging goods, services and capital, has existed as long as mankind and is claimed to have shaped our history. Even though these practices have generated significant benefits to societies around the world, trade also provokes human exploitation and destructive environmental effects. Trade connects buyers and suppliers, importing and exporting countries. In this dissertation, we connect both extremities of this trading relationship to find out if and how an importing country can address labour rights violations occurring at the bottom of the (agricultural) supply chain where goods are produced for its market.

The objective of the research project constituting the base of this dissertation, could not be addressed by one discipline alone as it required a macro (EU trade policy) and micro (farm workers) level analysis. Our research approach is therefore interdisciplinary, developed to bridge two disconnected disciplines: political science to study the motivations behind and implementation of EU decisions on social trade conditionality and agricultural economics to study trade unionism and working conditions in pineapple plantations. The project was carried out by two PhD students, Deborah Martens and Annelien Gansemans, with different disciplinary backgrounds, respectively political science and agricultural economics, and their supervisors.

The main question addressed in this dissertation is whether trade arrangements that were developed to promote labour rights through EU trade policy can improve labour conditions in third countries. In particular we have examined what these social trade instruments actually consists of as well as the relevance, or potential impact, of this approach. These questions are answered through an ensemble of academic articles gathered in the main section of this dissertation. Additionally, in the conclusions, the findings of the articles are combined with complementary data and insights obtained and developed over the course of the doctoral research.

While other existing EU social trade instruments are also assessed in this dissertation, the main focus is on the EU bilateral trade agreements. More specifically, we focused extensively on the trade and sustainable development chapters and the civil society mechanisms established through these chapters. Through a case study of the EU-Central American Association Agreement, as well as labour conditions in the Costa Rican pineapple sector, we have connected the bottom of the supply chain (the workers in pineapple plantations) to an important importer of fresh Costa Rican pineapples, being the EU. In this context, we have paid particular attention to the existence and functioning of trade unions, as well as their participation to EU trade arrangements, as they can enable better working conditions by representing workers through social dialogue.

A mixed methods approach was applied for the collection and analysis of the data. Empirical data was collected through a large number of interviews conducted in Belgium, Costa Rica and Honduras, focus groups with trade unions in Costa Rica, non-participants observations of the civil society meetings in Brussels, Costa Rica and Honduras, and a survey with members of the EU civil society mechanisms. The researchers cooperated in Qualitative Comparative Analysis, case study and content analysis.

We found that civil society mechanisms in the trade agreement have contributed to the agency, the ability to act and choose, of trade unions. Yet, this advancement is negated by the incapacity of the instrument to deal with the anti-union context in Costa Rica. In other words, for EU trade arrangements to be more effective in terms of improving labour conditions in third countries, it has to address both the agency of trade unions as well as the institutional context in which they operate, as the latter influences the ability to transform agency into action. This transformation is necessary in order to improve the currently asymmetrical power relations between business and trade unions, which can in turn positively affect labour conditions in the country.

Our research has identified the remaining great distance that exists between Brussels and the bottom of supply chains. Hence, the current EU approach is not able to exert influence across the different echelons of vertical labour governance which exists at international, national, sectoral and local level. In order to do so, the EU should improve the implementation of the existing social trade instruments and become much more assertive towards its trade partners. In addition, the EU should diversify its approach and focus on problematic sectors in each trade partner.

In addition, our research did not provide evidence that the reputation of the EU market demanding high labour standards is reflected in the purchasing realities within the EU. In sum, workers have not yet reaped the benefits of EU social trade arrangements. This is especially the case for the most vulnerable, such as illegal migrant workers in plantations.

Samenvatting

Handel, de praktijk van het uitwisselen van goederen, diensten en kapitaal, bestaat al zolang als de mensheid en zou ook onze geschiedenis hebben gevormd. Hoewel deze praktijk aanzienlijke voordelen heeft opgeleverd voor samenlevingen overal ter wereld, heeft handel ook de uitbuiting van mensen en destructieve milieueffecten teweeggebracht. Handel verbindt kopers en leveranciers, importerende en exporterende landen. In dit proefschrift schakelen we beide uiteinden van deze handelsrelatie aaneen, om uit te zoeken of en hoe een invoerend land schendingen van arbeidsrechten die zich voordoen aan de basis van de toeleveringsketen (in de landbouwsector) waar goederen worden geproduceerd voor zijn markt kan aanpakken.

Het doel van het onderzoeksproject dat de basis van dit proefschrift vormt, kon niet door één enkele discipline worden aangepakt omdat het een macro-analyse (EU-handelsbeleid) en micro-analyse (plantage-arbeiders) vereiste. Onze onderzoeksaanpak is daarom interdisciplinair, ontwikkeld om twee niet-verbonden disciplines aan elkaar te koppelen: politieke wetenschappen die de drijfveren achter en de implementatie van EU-besluiten over sociale handelsvoorwaarden bestudeert en landbouweconomie die zich buigt over vakbonden en arbeidsomstandigheden in ananasplantages. Het project werd uitgevoerd door twee doctoraatsstudenten, Deborah Martens en Annelien Gansemans, met elk een verschillende disciplinaire achtergrond (respectievelijk politieke wetenschappen en landbouweconomie), en hun promotoren.

De hoofdvraag in dit proefschrift is of de handelsinstrumenten die zijn ontwikkeld om arbeidsrechten te bevorderen via het EU-handelsbeleid, arbeidsomstandigheden in derde landen kunnen verbeteren. We hebben onderzocht uit wat deze instrumenten juist bestaan en wat de relevantie, of de potentiële impact, van deze aanpak is. Deze vragen worden beantwoord door middel van een verzameling wetenschappelijke artikels die gebundeld zijn in het hoofdgedeelte van dit proefschrift. Daarnaast worden in de conclusies de bevindingen van die artikels gecombineerd met aanvullende empirische gegevens en inzichten die werden verkregen en ontwikkeld in de loop van het doctoraatsonderzoek.

Hoewel andere bestaande EU-instrumenten voor sociale handel ook worden behandeld in dit proefschrift, ligt de nadruk vooral op de bilaterale handelsovereenkomsten van de EU. Meer specifiek hebben we uitgebreid aandacht besteed aan het hoofdstuk over handel en duurzame ontwikkeling en de mechanismen die het maatschappelijk middenveld betrekken in de toezicht op de implementatie van dit hoofdstuk. Door middel van een case study van het handelsakkoord tussen de EU en Centraal-Amerika en de arbeidsomstandigheden in de Costa Ricaanse ananassector hebben we de basis van de toeleveringsketen (de werknemers in ananasplantages) verbonden met een belangrijke importeur van verse Costa Ricaanse ananassen, namelijk de EU. Hier hebben we ons gericht op het bestaan en de werking van vakbonden, en hun deelname aan de EU-instrumenten, omdat zij betere

arbeidsomstandigheden mogelijk maken door werknemers te vertegenwoordigen via sociale dialoog.

Voor het verzamelen en analyseren van gegevens pasten we een onderzoeksaanpak met verschillende methoden toe. Empirische gegevens werden verzameld via een groot aantal interviews in België, Costa Rica en Honduras, focusgroepen met vakbonden in Costa Rica, observaties van bijeenkomsten van het maatschappelijk middenveld in Brussel, Costa Rica en Honduras, en een enquête onder de EU leden van de mechanismen van het maatschappelijk middenveld. De onderzoekers werkten samen voor *Qualitative Comparative Analysis*, case study en inhoudsanalyse.

We hebben vastgesteld dat de mechanismen van het maatschappelijk middenveld in de handelsovereenkomst hebben bijgedragen tot de *agency*, het vermogen om te handelen en te kiezen, van vakbonden. Deze vooruitgang wordt echter teniet gedaan door het onvermogen van het instrument om de anti-vakbondscontext in Costa Rica aan te pakken. Met andere woorden, om EU-handelsregelingen effectiever te maken in het verbeteren van de arbeidsomstandigheden in derde landen, moet het zowel de *agency* van vakbonden als de institutionele context waarin zij functioneren aanpakken. De institutionele context beïnvloedt namelijk het vermogen van vakbonden om hun *agency* om te zetten in actie. Deze transformatie is nodig om de huidige asymmetrische machtsverhoudingen tussen bedrijven en vakbonden te verbeteren. Die veranderingen kunnen dan op hun beurt de arbeidsomstandigheden in het land positief beïnvloeden.

Ons onderzoek bevestigt dat er letterlijk en figuurlijk een grote afstand blijft bestaan tussen Brussel en de basis van toeleveringsketens. Vandaar dat de huidige EU-aanpak geen doorslaggevende invloed uitoefent op de verschillende trappen van de verticale *labour governance* die bestaat op internationaal, nationaal, sectoraal en lokaal niveau. Om dit te doen, zou de EU de implementatie van haar bestaande instrumenten voor sociale handel moeten verbeteren en assertiever moeten optreden ten opzichte van haar handelspartners. Bovendien moet de EU haar aanpak diversifiëren en zich concentreren op problematische sectoren in elke handelspartner.

Daarnaast heeft ons onderzoek geen bewijs geleverd dat de reputatie van een veeleisende EU-markt omtrent arbeidsnormen, overeenkomt met de producten die de EU invoert. Kortom, werknemers hebben de vruchten van EU-instrumenten voor sociale handel nog niet geplukt. Dit is vooral het geval voor de meest kwetsbaren, zoals illegale migrantenarbeiders in plantages.

About the author

Deborah Martens obtained a Bachelor degree in Communication Management at the Artevelde College in Ghent in 2007. After a long travel she continued her studies and obtained a Master in EU studies at Ghent University in 2012. Before returning to academia, Deborah explored the EU bubble through her work in an association for energy storage and contributed to the internal communication of a Belgian retailer. In December 2014 she started her PhD research at the Centre for EU Studies with a grant from the Special Research Fund. She collaborated on the interdisciplinary research project 'When EU trade politics and farm economics meet' with Annelien Gansemans, from the department of agricultural economics, on the impact of EU trade on social development in Latin America. Together they aimed at understanding how labour conditions in the agricultural sector are influenced by trading with the EU. Concretely, they linked the macro level of EU politics and trade agreements as well as the meso level of CSR strategies of (European) firms to the micro level of the life on the ground in the agricultural sector, more particularly in the pineapple plantations of Costa Rica. Deborah also taught an optional Master course on EU Fair Trade policy.

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List of abbreviations

CANAPEP	Chamber of Costa Rican pineapple producers
CAFTA-DR	Dominican Republic-Central American Free Trade Agreement with the US
CSI	Civil Society Involvement
CSM	Civil society mechanism
CSR	Corporate Social Responsibility
DAG	Domestic Advisory Group
DG	Directorate General
ETI	Ethical Trading Initiative
EU	European Union
EU-CA AA	European Union - Central America Association Agreement
FACB	Freedom of Associations and Collective Bargaining
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	General System of Preferences
GSP +	Special incentive arrangement for sustainable development and good governance, part of GSP
ILO	International Labour Organisation
ILO CLS	ILO Core Labour Standards
MSI	Multi-stakeholder initiative
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
PINDECO	Pineapple Development Company - Del Monte
TSD Chapter	Chapter on Trade and Sustainable Development
US	United States of America
WTO	World Trade Organisation

1. Introduction

This dissertation is the result of a journey that started in December 2014 and ended in February 2019. It departed from the wish to connect agricultural workers at the bottom of the supply chain to the EU market and to research if and how the latter could positively influence the labour conditions of the former.

The research was conducted in the context of an interdisciplinary research project in which two disconnected disciplines were combined: political science to study the motivations behind and implementation of EU decisions on social trade conditionality and agricultural economics to study the working conditions in Costa Rican pineapple plantations.

The dissertation is structured as follows: In the remaining of the introduction, the puzzle from which the research emerged as well as the status of the literature on our main subjects are discussed. This is then followed by the elaboration of the research design of the dissertation, introducing the overarching research questions addressed in the thesis. Subsequently, the methodology and methods used throughout the research are explained and an overview of the articles in the main body of the dissertation is given. The chapter following the introduction provides a comprehensive picture of our case study, Costa Rica and its pineapple industry.

The main body comprises six articles that were written in the course of the PhD journey (see Table 1). In the conclusions, the answers to the main research questions are formulated based on the findings presented in the different articles, combined with complementary data and insights obtained and developed over the course of the doctoral research. These general conclusions are followed by reflections on the interdisciplinarity of our research, its main contributions as well as limitations and suggestions for further research. Finally, policy recommendations to improve the relevance and potential impact of EU social trade arrangements as well as labour governance in supply chains are presented.

Table 1: Overview articles included in the dissertation

- | |
|--|
| <ul style="list-style-type: none">• Article 1: The EU and Fair Trade: hands-off?
<i>Deborah Martens & Jan Orbie</i>
Book chapter in the Handbook on the EU and International Trade, S. Khorana & M. García (Eds.) (2018)• Article 2: Do labour rights matter for export? A Qualitative Comparative Analysis of pineapple trade to the EU
<i>Annelien Gansemans, Deborah Martens, Marijke D'Haese, Jan Orbie</i>
Academic article, published in Politics and Governance, 5(4), 93–105 (2017) |
|--|

- **Article 3: Mapping variation of civil society involvement in EU trade agreements: A CSI Index**
Deborah Martens, Lore Van den Putte, Myriam Oehri, Jan Orbie
Academic article, published in *European Foreign Affairs Review*, 23(1), 41–62 (2018)
- **Article 4: Explaining variation of civil society involvement in EU trade agreements**
Myriam Oehri, Jan Orbie, Deborah Martens, Lore Van den Putte
Submitted to the *Journal of European Integration*
- **Article 5: Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements**
Jan Orbie, Deborah Martens, Myriam Oehri, Lore Van den Putte
Academic article, published in *Third World Thematics: A TWQ Journal*, 1(4), 526-546 (2016)
- **Article 6: Trade unions in multi-stakeholder initiatives: what shapes their Participation?**
Deborah Martens, Annelien Gansemans, Jan Orbie, Marijke D'Haese
Academic article, published in *Sustainability*, 10(11), 4295 (2018)

Table 2: Additional contributions

- **Civil society meetings in European Union trade agreements: features, purposes, and evaluation (included in Annex)**
Jan Orbie, Deborah Martens, Lore Van den Putte
Published as a CLEER Paper, 2016/3 (2016)
- **Civil society meetings in EU trade agreements: recommendations and lessons for EPAs (included in Annex)**
Deborah Martens, Jan Orbie, Lore Van den Putte, Yentyl Williams
Published as an ECDPM Briefing Note, No. 93 (2016)
- **EU handelsakkoorden en beleidsruimte in ontwikkelingslanden: Wegschoppen van de ladder, of evenwichtig compromis?**
Deborah Martens, Niels Gheyle, Jan Orbie
Commissioned study by 11.11.11, Coalition of the Flemish North-South Movement

1.1 Research puzzle

Trade, the practice of exchanging goods, services and capital, has existed as long as mankind and is claimed to have shaped our history (Bernstein, 2008). Indeed, world trade has played an important role in the rise and fall of empires throughout the past and in the accumulation of wealth of today's most affluent countries. Even though these practices have generated significant benefits to societies around the world, trade also provoked human exploitation and destructive environmental effects. Trade connects buyers and suppliers, importing and exporting countries, forming an organised social practice where structured and repeated exchange involve markets and regulatory (inter)national bodies (Risse, 2012). It is therefore considered to be an important site of global justice.

In this dissertation, we want to connect both extremities of the trade relationship, namely the importing country, representing the consumer, and the worker in the producing country. Consumers in developed markets are said to have become more conscious about and sensitive to the circumstances in which their food, among other goods, is produced (Hainmueller et al., 2015; Mosley, 2017). Nielsen (2016), found that a large majority of consumers worldwide feel more positively about companies that are transparent about where and how products were made, raised or grown; while Deloitte (2016) concluded that a small but growing number of consumer in the US choose a retailer based on their social impact, included the fair treatment of workers. In a Eurobarometer survey (2016) half of EU respondents were prepared to pay more for groceries from developing countries (such as fair trade products) to support people living in those countries.

On the importing side of the trading relation, we want to focus on what the EU does to improve working conditions in producing countries. Its internal market of over 500 million consumers is an attractive prospective market for exporters. Consequently, the EU has considerable leverage to condition access to its market upon certain requirements and it usually does not shy away of externalising its market-related policies and regulatory measures (see Market Power Europe, Damro, 2012). Moreover, the EU is considered to be an actor which is structurally inclined to promote norms and values, including sustainable development and labour standards, beyond its borders (see Normative Power Europe, Manners, 2009). The EU trade-labour nexus, striving for the respect of labour norms through trade, generated different social trade instruments since the 1990s. In addition, it has been deepened and widened since the mid-2000s, becoming what Van den Putte & Orbie (2015) have called an 'unobjectable norm' in the EU's current trade policy. Today, EU social trade arrangements typically require the respect for at least the Core Labour Standards defined by the International Labour Organisation (ILO CLS). Inevitably, these developments raise questions on how the EU social trade instruments function as well as their relevance to the improvement of labour conditions in third countries.

At the other end of the trading relation, workers produce goods to be exported to the European market. Ideally and depending on the labour conditions, this activity should advance, or at

least not deteriorate, the social development of these workers. The ILO CLS 'Freedom of Association and Collective Bargaining', is considered to be of particular importance for good working conditions as they are 'enabling' rights for all other rights at work (ILO, 2019). These rights allows workers to be represented by an independent worker's organisation, a trade union, in industrial relations between employers and employees. Through social dialogue they provide a route to the negotiation of and access to specific working conditions such as a health and safety policy, living wage and working hours, which will in turn improve the social development of workers (Barrientos & Smith, 2007).

If the trade of goods is being governed at macro-level by a formal framework, stipulating the need for the ratification and implementation of the ILO CLS, what can be expected for workers at micro-level? In other words, what is the relevance of EU trade arrangements for workers, and especially for their trade union rights, at the bottom of the supply chain? Workers active in the agricultural sector are generally the most socially vulnerable and lowest paid, labouring in what is often the 'employer of last resort' (Hurst, 2007). In addition, crops growing in plantations are mostly produced for export (Hancock, 2017), we are therefore especially interested whether plantation workers can benefit from working in a sector supplying the EU.

These questions constitute the research puzzle in which we wonder whether the EU can improve labour conditions in third countries. More specifically, the relevance of EU trade arrangements for improving labour conditions and the extent to which workers benefit from working in (agricultural) supply chains exporting to the EU, a self-declared high labour standards demanding market, are two sides of the same coin and connect two ends of a supply chain.

1.2 Status quaestionis

While the research in this dissertation is embedded in the wider debate on Fair Trade and what constitutes fairness in trade, it is located at the intersection of three broad subjects: EU trade policy, civil society and labour conditions. The overlap between these subjects forms at least one relevant strand of literature which will be introduced below (see Figure 1). This concise status quaestionis situates the research of the dissertation, leading to the identification of research gaps and the formulation of the research questions. A more comprehensive literature review of each of these researched subjects is included in the different articles of the dissertation.

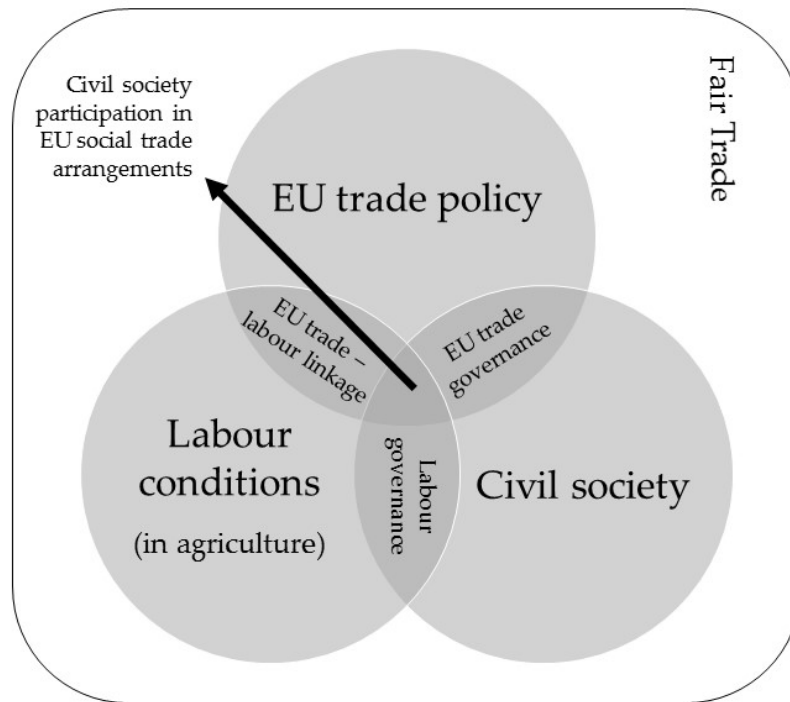


Figure 1: Visualisation of subjects addressed in this dissertation

1.2.1 EU trade-labour linkage

One of the key considerations leading to the creation of the International Labour Organisation (ILO) in 1919 was that ‘the failures of any nation to adopt humane conditions of labour is an obstacle in the way other nations which desire to improve conditions in their own countries (ILO Constitution, as cited in De Schutter, 2015)’. This statement distinguishes the link between labour conditions and trade; it explains how countries exploiting their comparative advantage of low labour conditions to increase their international competitiveness, can discourage other nations to improve their labour rights situation. In addition to this collective action problem leading to labour conditions being ‘stuck at the bottom’, there is also a risk that competition leads to the deterioration of labour conditions in a ‘race to the bottom’ (Chan & Ross, 2003). Even though there is no consensus on the impact of trade on labour conditions, or on the impact of economic globalisation on sustainable development in general (Mosley, 2005; Silver, 2003), there is an interplay between international trade and labour conditions in producing countries.

Whereas the ILO was established to address labour conditions globally, the complementary International Trade Organisation should have enabled a consistent approach in trade, employment and economic development (De Schutter, 2015). The International Trade Organisation, negotiated from 1946 to 1948, was however never created due to opposition within the US Congress. Instead, the General Agreement on Tariffs and Trade (GATT), which focussed solely on trade liberalisation, was institutionalised. The formal dissociation of trade

and labour issues culminated in the creation of the World Trade Organisation (WTO) in 1995, where a potential social clause was again vetoed, this time by developing countries. The hard enforcement of WTO rules through economic sanctions stands in sharp contrast with the ILO's limited clout. The ILO relies heavily on soft instruments of political pressure and reputational damage, confirming the subordinate status accorded to labour issues. As a result a fragmentation in international law can currently be observed, separating the governance of trade (tariffs, quotas and the whole range of non-tariff barriers) and supposedly non-trade issues (such as labour and environmental matters).

However, since the mid-1990s, the EU started to pursue social objectives through its trade policy (Orbie, 2011). First, the EU further developed its existing unilateral instrument, the Generalised System of Preferences (GSP), by creating additional beneficial market access for developing countries complying with the ILO CLS and certain environmental standards. Only small, lower-income and poorly diversified countries, which adhere to the good governance criteria are eligible (Hvidt Thelle et al., 2015). This regime still exists today, even though it has been modernised several times to be compatible with WTO rules and to improve its functioning.

Second, due to the stalling negotiations of the multilateral WTO Doha Round, which started in 2001, the EU has turned its attention to bilateral trade agreements. Since the launch of the EU trade strategy 'Global Europe' in 2006, the conclusion of bilateral trade agreements securing reciprocal market access to foster (EU) competitiveness has been an explicit trade policy objective. At the time of writing, the EU has concluded 10 trade agreements¹ with 17 countries and more agreements are in the pipeline. These constitute the latest 'generation' of EU trade agreements and contain a new approach to the EU trade-labour linkage, namely a chapter on trade and sustainable development (TSD). Through these chapters, trade partners agree to uphold certain sustainable standards, among which the ILO CLS.

There is a burgeoning body of literature on the EU trade-labour linkage and its social trade arrangements, researching the subject from different angles. While the unilateral GSP+ arrangement has been analysed by several authors (Bartels, 2007; Orbie & Tortell, 2009; Vogt, 2015; Wardhaugh, 2013; Yap, 2013), most scholarly attention has been going to the bilateral agreements. Here, the EU approach is often juxtaposed with that of other key trade players such as the US (Ebert & Posthuma, 2011; Horn et al., 2010; International Institute for Labour Studies, 2015; Leeg, 2018; Oehri, 2014, 2015). Others have researched the defining features of the EU bilateral social trade (Van den Putte, 2016) or the internal dynamics behind it (Adriaensen & González-Garibay, 2013). Moreover, there is a growing interest for researching

¹ with South Korea, Central America, Peru-Columbia-Ecuador, Ukraine, Moldova, Georgia, Singapore, Canada, Vietnam and Japan. This enumeration does not include the Economic Partnership Agreements the EU is concluding with African, Caribbean and Pacific countries. These implement the trade provisions of the Cotonou Agreement (2000) and thus do not fall within the 'new generation' of EU trade agreements.

the implications of EU labour provisions in third countries (Campling et al., 2016), leading to impact studies singling out EU trade partners: Harrison et al. conducted research in the Caribbean, Moldova and South Korea (2018), Marx et al. in Colombia (2016), Orbie et al. in Peru (2017), Tran in Vietnam (2017) and Smith et al. in Moldova (2018). Orbie & Van Roozendaal (2017) explain the existing confusion concerning the conceptualisation and operationalisation of impact studies when researching the consequences of EU labour provisions. In line with Van den Putte (2016), these authors distinguish between intermediate impact and ultimate impact. They also acknowledge a lack of data on the matter.

Even though the main focus of the EU trade labour linkage so far has been on the ILO CLS, all new generation EU trade agreements also mention Corporate Social Responsibility (CSR). This refers to mainly voluntary and business-driven initiatives, aimed at reconciling the economic, social and environmental ambitions of companies. It has also recently been rebranded to Responsible Business Conduct. Whereas Peels et al. (2016) are rather optimistic and consider these CSR provisions as a way to counterbalance business rights and responsibilities and to recognise the role of businesses in furthering labour rights, Waleson (2015) questions whether trade agreements can be an effective instrument to enforce a voluntary framework on non-contracting parties to the agreement. Hanchez (2018) analysed the references to CSR in EU trade agreements and concluded that they are characterised by a low level of ambition. However, to our knowledge, no empirical research was conducted on this aspect of the EU trade labour linkage.

1.2.2 EU trade governance

For long, research on EU trade policy concentrated on the power dynamics between the European Commission and the European members states as well as on the economic dimension of trade. This focus has gradually widened and now includes non-state actors and 'non-trade' issues such as sustainable development. In what follows, we will describe the evolution concerning the involvement of civil society in trade policy.

Since the creation of the European Community in 1957, trade policy has been an exclusive EU competence. Scholars have termed the delegation of trade authority as 'collusive delegation', where the delegation to a higher level shields the pursued liberalisation process from protectionist actors interests (De Bièvre & Dür, 2005). Gheyle (2019) gives an account of the politicization of international trade policy and explains how the legitimacy of this policy began to erode when its scope and impact on other policy areas, especially internal regulation, grew. In the 1990s, it was mainly the multilateral level that came under fire, even though there was also much protest against the trade agreement between Canada, the US and Mexico. However, with the deadlock in the multilateral negotiations leading to the EU to focus on bilateral agreements, EU trade policy became a target as well.

At the turn of the century, the contestation of EU trade policy coincided with a wider democratic legitimacy crisis of the EU and international organisations in general. Until then,

the idea that EU citizens granted a 'permissive consensus' to the EU had been dominant. However, with the waning of this consensus, the EU shifted its attention towards participatory democracy and the corresponding input-oriented dimension of democratic legitimacy, which results from "authentic participation and governance 'by the people'" (see Finke, 2007; Scharpf, 1999). The Commission launched its aspirations for inclusive policymaking in its White Paper on European Governance (2001), where it asserts that "the EU's legitimacy today depends on involvement and participation". Even though this approach led to the creation of several instruments through which citizens could directly give their input, e.g. opinion polls or ad hoc consultations for specific policies, the emphasis was on the involvement of civil society. Also in academic circles, debates on the existence of a 'European civil society' and its potential as a bridge between citizens and EU institutions have been high on the agenda ever since (Armstrong, 2002; De Schutter, 2002; Finke, 2007; Kohler-Koch & Quittkat, 2013; Smismans, 2003, 2006; Steffek & Nanz, 2008).

In this context and urged by the heavy anti-WTO protests in Seattle, DG Trade launched its Civil Society Dialogue in 2000. Even though these meetings were set-up as a mechanism for consultation, they turned out to be mainly briefing session from the Commission with no genuine attempt to seek a broader input into the formulation of policy (Hocking, 2004). Indeed, this mechanism has not bolstered the influence of non-governmental organisations (NGOs) on EU trade policy (Dür & De Bièvre, 2007; Jarman, 2007). The Civil Society Dialogue still exist today, however the contestation against TTIP and the corresponding politicization of EU trade policy have revived the mechanisms for civil society participation, generated more willingness to listen to civil society and lead to more transparency in trade negotiations (see Gheyle, 2019).

Apart from these dialogues, another participatory instrument in EU trade policy was created. The TSD chapters of the new generation EU trade agreements (see *supra*) foresee the establishment of domestic advisory groups and transnational civil society meetings to monitor their implementation. When our research project was initiated, little was known about these mechanisms that were still being set-up². Altintzis (2013) provided a first account of this new phenomenon by introducing the EU-Korea civil society mechanism. In addition, a quantitative study by Postnikov and Bastiaens (2014) painted a positive picture of the impact of civil society involvement in EU trade agreements on the improvement of labour conditions. In addition, Van den Putte (2015) compared the EU approach of civil society involvement in the monitoring of the implementation of labour provisions to that of US.

1.2.3 Labour governance

Labour rights were historically dealt with at governmental level, as states were responsible for developing labour laws in the 20th century in order to secure justice in employment relations

² The first civil society meetings organised in the context of the EU-Korea agreement took place in 2012, those for the subsequent trade agreement with Central America in 2014.

(Langille, 2005). Through domestic labour law and the participation to dedicated international organisations such as the ILO, states have traditionally been the drivers of labour regulation.

Gereffi and Mayer (2005) argued that globalisation has led to a number of governance deficits. One of them is that global production is no longer embedded in developed country governance institutions. On the contrary, supply chains have expanded around the globe beyond one state's jurisdiction, and neither the domestic nor international institutions have been capable to govern them appropriately. Even though Gereffi and Mayer refer to broad societal issues, this deficit has also had an impact on the governance of labour rights where the role of the state seems to have diminished (Toffel et al., 2015). In turn, private entities such as multinational corporations, NGOs, and multi-stakeholder certification regimes are creating additional regulatory regimes for the improvement of labour conditions. According to Langille (2016) the rapid development of private, voluntary labour regulation schemes is the single most significant, albeit controversial, development in international labour governance.

Global labour governance is thus a comprehensive concept incorporating the different tools developed to deal with labour rights issues. It comprises public (e.g. labour laws, ILO conventions, soft law initiatives), private (e.g. voluntary standards and codes of conducts) and hybrid, (i.e. a combination of both private and public initiatives) (Hassel, 2008; Meardi & Marginson, 2014). Much can be said about labour governance, however at this stage, we are interested in two particular aspects of labour governance: the interplay between public and private actors, and the role of trade unions.

First, the 'layering' of multiple public and private rules has prompted research about the relationship between public and private initiatives (Bartley, 2011; Moon & Vogel, 2008; Toffel et al., 2015). Fransen and Burgoon (2017) found that public interventions tend to work complementary to, or even strengthen, private labour policy. In contrast, private interventions tend either to not affect, or to actually substitute and undermine public labour policy and regulatory efforts. In addition, Toffel et al. (2015) concluded that adherence to CSR (cf. private) commitments is not only associated with institutions in the supplier's home country, but also with institutions in the global buyer's home country. Anner's research (2017) found that the potentially positive impact of CSR interventions will be negated in a labour repressive regime. He also emphasises the legitimacy of democratic state entities to enforce labour rights. As a result, Anner identified building state capacity and legitimacy in such regimes as part of the solution and refers to forms of state and inter-state influence to address this problem. In addition to state capacity, Berliner et al. (2015) as well as Mosley (2017) highlight the importance of political will together with the interests and priorities of relevant political actors in developing countries. These can be influenced by external pressure such as activists campaigns, reputation conscious multinationals and trade agreements. In sum, even though some voices claim the state is losing ground in labour governance and it is being replaced by private actors through 'political CSR' (Scherer & Palazzo, 2011), others are pointing to an

important role for public actors to actively collaborate with private actors and to embed private initiatives in national and international institutions (Knudsen & Moon, 2017).

Second, trade unions have traditionally played a crucial role in the promotion of labour rights by representing worker's interests in (tripartite) social dialogue. These 'industrial relations', take place within individual companies, sectors and at the national policy level. This being said, trade unions across sectors and nations should not be considered as a homogenous group. Their functioning and strength depends to a large extent on the political economy and history of labour struggles of the country or region in which they occur (De Neve, 2008; Howell, 2005). In addition, the nature of the work (e.g. labour intensive) and how the sector operates (e.g. vertically or horizontally (dis)integrated) and the worker's leverage also has an impact on workers' mobilisation and their bargaining power (Estanque, 2009; Kelly, 1998; Silver, 2003). Besides their role in improving labour conditions, trade unions have also been attributed a broader function as vehicles for societal change, for instance concerning socio-economic policies (Lucio, 2016), better governance (Cheol-Sung, 2007) and democratisation (Baccaro et al., 2018).

In general, a decline in unionisation since the 1980s can be observed. Based on his analysis of the US labour movement, Brueggemann (2018) lists the following causes: union efficacy and worker affluence, internal failures of the labour movement, technological innovation, class fractionalisation, globalisation, employer strategy and the political context. However, some of these factors are not pertinent in other, less developed, countries. In addition, violence against trade unionists, which could potentially be categorised as political context as it occurs in labour repressive regimes, should also be taken into account. While some scholars analyse the decline of trade unions, there is also a growing body of literature on 'union revitalization', claiming that it is too early to cast off trade unions and their function in our societies (Balasubramanian & Sarkar, 2015; Freje & Kelly, 2003).

In this dissertation, special attention will be given to labour conditions in the agricultural industry, and particularly to those of waged workers, not farmers, in the EU trade partners (see *infra*). The organisation of workers is particularly weak within this sector, as trade unions seldom emerge within food supply chains. When they do, they are often excluded from management discussions on wages or working conditions (Oxfam, 2018). There are different reasons why agricultural workers remain poorly organised (Hurst, 2007). While some of these difficulties are practical or financial, there are often also legal and administrative barriers in place. Moreover, agriculture workers often work on a temporary basis or are subcontracted, which makes it difficult to register as a trade union member. Even though there is a plethora of private standards and certifications in this sector which might improve labour standards in some cases, research has shown that they do little to challenge commercial practices or embedded social relations that underpin poor labour standards (Barrientos & Smith, 2007).

This overview of the evolution of our subjects and the vast body literature written about them reveals that, even though much research has been done, there are still several research gaps to

be addressed. While the EU trade labour linkage has been researched extensively, questions on its consequences for labour conditions in the EU trade partner remain. In addition, there is a general need for empirical data on this linkage, especially resulting from interdisciplinary research focussing on one particular sector. Moreover, at the beginning of our research, little was known about the new governance mechanism created in the EU's bilateral trade agreements. Finally, against the backdrop of these EU developments, the influence of non-state actors and new approaches in labour governance should also be taken into account. Based on this knowledge, our research questions and research approach will be elaborated in the next section.

1.3 Research design

1.3.1 Research questions

Since the outset the underlining purpose of our research, linking the two sides of the (agricultural) supply chain, has been to examine what the EU trade arrangements signify for labour conditions in third countries. Our main research question is therefore **'Can EU trade arrangements improve labour conditions in third countries?'**

Building on the literature introduced above, we have chosen to approach our research topic in a comprehensive manner. As a result, the sub-questions developed to answer the main research question have retained a broad focus. First, we want to give an overview of EU trade arrangements and how they function. Second, we want to assess the potential of these EU trade arrangements to actually improve labour conditions in third countries. As a result, the sub-questions underpinning the main research question are:

- First, **how** do EU trade arrangements promote the improvement of labour conditions in third countries?
- Second, **how relevant** is this approach to the improvement of labour conditions in third countries?

We will further elaborate these research questions in the following paragraphs. In the conclusions, we will answer them by combining the findings from the articles in the main body of this dissertation with complementary information obtained and developed over the course of the doctoral research.

1.3.2 RQ 1: How do EU trade arrangements promote the improvement of labour conditions in third countries?

As discussed above, the EU has developed different instruments over the years in order to improve labour conditions. This dissertation focusses mainly on the TSD chapters in EU bilateral free trade agreements, as it is currently the most prevalent social trade instrument.

However, to put the features of this bilateral instrument in perspective, and to allow a certain degree of comparison, we will contrast it with the unilateral social trade instrument (the GSP+) and hybrid social trade instruments, which is an umbrella term for public-private initiatives.

In addition to identifying the different existing social trade instruments, their main objectives will be discussed. These reflect the substantial content of the instruments concerning labour rights and specifies what the EU exactly promotes and wants to achieve.

In order to come to a better understanding of how these instruments promote labour rights improvement in third countries, their governance and enforcement will be analysed. Governance refers to how objectives are implemented and monitored, and by whom. This can be the responsibility of public or private actors, or a combination of both. Since little is known about civil society mechanisms established in EU bilateral trade agreements, we will focus on different aspects of this new phenomenon.

In terms of enforcement, we will look into the ways in which compliance with the instrument's objectives is pursued. This can be either through a hard or soft approach (see International Institute for Labour Studies, 2015). Hard enforcement refers to a conditional approach where non-compliance with the labour commitments made in the trade instrument leads to sanctions. In contrast, soft enforcement or a promotional approach, is characterised by cooperative activities such as capacity building and dialogue.

In sum, to answer the question how EU trade arrangements promote the improvement of labour conditions in third countries, an analytical overview will be given of the (1) different instruments, (2) their objectives, (3) governance and (4) enforcement.

1.3.3 RQ 2: How relevant is this approach to the improvement of labour conditions in third countries in general?

In order to assess the relevance of EU social trade instruments, we will first develop and operationalise a working definition, which will be applied in the conclusion of this dissertation.

Even though 'relevance' is a concept that has been researched and defined across different academic disciplines, such as cognitive and information science and philosophy, it does not enjoy a special status in the context of political science or agricultural economics. Consequently, the common or ordinary meaning of the term 'relevant' will be used as a starting point. The Oxford Dictionary defines relevant as "closely connected or appropriate to what is being done or considered", whereas Merriam-Webster Dictionary describes it as "having significant and demonstrable bearing on the matter at hand". To further develop the understanding of relevance, a look at Gorayska & Lindsay's (1993) work is helpful. They explain how relevance is, amongst other characteristics, goal-dependent and functional as it denotes the relation between means and ends. The authors specify that "an item (physical or

immaterial) is relevant to a goal if and only if it can be an essential element of some plan capable of achieving the desired goal". In addition, the OECD Glossary provides us with a useful perspective on how to address relevance from a policy perspective. Here relevance is defined, in the context of international development, as "the extent to which the objectives of a development intervention are consistent with beneficiaries' requirements, country needs, global priorities and partners' and donors' policies. Retrospectively, the question of relevance often becomes a question as to whether the objectives of an intervention or its design are still appropriate given changed circumstances" (OECD, 2002).

These definitions indicate the two central elements of assessing relevance. On the one hand, there is the need to identify the goal that is pursued. The goal we will research is the improvement of labour conditions in third countries. In addition, the reference in the OECD definition to 'the beneficiaries' needs' will be converted to 'the needs of workers in third countries'. On the other hand, the capacity to achieve that goal needs to be considered. This will be addressed by mentioning the 'appropriateness' of the EU instruments to their goal as well as whether these are 'an essential element of a plan capable of achieving that goal'. In sum, the following working definition is formulated:

For EU social trade instruments to be relevant they should be appropriate to the needs of workers in third countries as well as an essential element of a plan capable of achieving improved labour conditions.

Due to their substantive difference, the two central elements of this working definition –needs of workers and essential element of a plan– will be elaborated separately.

1.3.3.1 Needs of workers: the empowerment of trade unions

Even though not all workers worldwide have exactly the same needs, there are some overarching principles that should be met on the 'shop floor'. The ILO Declaration on Fundamental Principles and Rights at Work (1998) is the most relevant reference as it is widely recognised and universally applicable. The Declaration contains the four Core Labour Standards, a set of four fundamental, universal and indivisible human rights:

1. Freedom of association and the effective recognition of the right to collective bargaining
2. The elimination of all forms of forced or compulsory labour
3. The effective abolition of child labour
4. The elimination of discrimination in respect of employment and occupation

This research will focus on the first standard, Freedom of Association and Collective Bargaining (FACB). Freedom of Association, also enshrined in the Universal Declaration of Human Rights (1948), is both an individual and a collective right. It determines that everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests (European Commission, 2019). Collective Bargaining is considered a key means through which employers and

employees, represented by their trade unions, can establish fair wages and working conditions (ILO, 2019). The objective of these negotiations is to result in a collective agreement that regulates terms and conditions of employment.

FACB are considered to be particularly important as they are 'enabling' rights for all other rights at work (ILO, 2019). FACB allows for workers to be represented by an independent worker's organisation in industrial relations between management and workers, ensuring participation in discussions and negotiations at company, sectoral and national level. FACB as enabling rights provides a route to the negotiation of and access to specific working conditions, such as a health and safety policy, living wage and working hours, which have been labelled 'outcome rights' (Barrientos & Smith, 2007).

Due to the potential positive influence of FACB on working conditions through the representation of workers by trade unions, the needs of workers will be assessed through the capability of the EU social trade instruments to empower trade unions. Our research is conducted in a context where trade unions encounter difficulties to be established and function properly (see chapter Costa Rican context). We therefore believe that for EU social trade instruments to be appropriate, they should contribute to the transformation of power relations that currently curb the functioning of trade unions.

Empowerment is a concept that emerged in the context of international development in general and human development in particular, often focussing on women's empowerment and poverty reduction. Drydyk (2013) mentions how "it is nearly customary to begin a conceptual article on empowerment by lamenting how confused the concept has become". A few words should be said about our interpretation of empowerment.

Anderson & Simm's (2004) provide us with a useful description of empowerment: "the process of awareness and capacity building, which increases the participation and decision-making power of citizens and may potentially lead to transformative action which will change opportunity structures in an inclusive and equalising direction". For our purpose we will replace 'citizens' by 'trade unions', while also distilling a number of aspects from this description that we believe matter for empowerment. First, there is the notion of an increased capacity of an actor to undertake action. We interpret this aspect as agency which is the ability and capacity of an actor to choose and act. Second, empowerment should be transformative. While, some scholars and practitioners focus solely on the possibility and expansion of 'choice' as being empowerment, we follow Drydyk (2013) in his claim that mere choice-expansion is not transformative. Empowerment requires this increased capacity and range of choices to lead to durable changes in inequality and power dynamics to the benefit of the (previously) less-powerful actor. Finally, and related the previous aspect, we see empowerment as a process leading to an outcome and not as a result in itself. Drydyk (2013) explains how empowerment does not refer to a state of affairs, but to a process of change with a certain outcome.

In our case, trade union empowerment would signify the process of increasing trade unions' capacity to voice their interests. This would lead to balancing power dynamics in their favour in a durable manner.

Even though the process is not by default conflictual or a zero-sum game, it is quite likely that such structural changes to the organisation of vested interests will incite resistance. In addition, it should also be mentioned that when a worker chooses to join a trade union, this can also be considered as empowering (see Drydyk, 2013). However since the EU social trade instruments analysed in this dissertation involve trade unions and not trade unionists or workers, we will focus on the collective rather than the individual level.

1.3.3.2 Essential Element

To be relevant, the EU social trade arrangements should, in our interpretation, also be an essential element of a plan capable of achieving improved labour conditions in addition to being appropriate to workers' needs.

The arrangement should thus be considered as an element of a broader plan. However, when examining international labour governance, it seems that there is currently no guaranteed plan to achieve proper labour conditions for workers worldwide. The landscape of labour governance initiatives is a hotchpotch of uncoordinated and overlapping mechanisms along vertical (local, sectoral, national and international) and horizontal (public-private) dimensions. It would, however, be beyond the scope of this dissertation to evaluate the international labour governance as a whole. In line with our research objective, we will focus on how EU social trade arrangements perform according to the context of the trade partner as well as 'the plan' they are part of. We will do so by assessing the coherence of the EU approach with the trade partner's context and the other international components of the plan.

In addition, the element should also be essential, entailing that it is a necessary, even crucial, part of the plan. This implies the need to know whether and to what extent the EU approach plays an indispensable role in the promotion of labour rights in third countries. Given the importance of the domestic context of a country, one could even wonder whether international arrangements such as those researched in this dissertation could ever be indispensable and not just remain accessory. However, since we focus on the international aspect of labour governance and we are interested in how these arrangements can influence the domestic context, we believe it is appropriate to determine the importance of EU arrangements at local, national and international level. It is however difficult to isolate the consequences of EU efforts as 'the plan' includes other national and international players. We will therefore conduct a (modest) counterfactual analysis in the conclusion, questioning whether the labour rights situation would have been the same in the absence of the EU social trade arrangements.

In sum, whether the EU social trade arrangements are essential to the improvement of labour conditions in third countries will be assessed through (1) the coherence of the EU approach with the trade partner's context and other international labour governance initiatives, (2) the indispensability of the EU arrangements both at local, national and international level.

In the next section we will describe the main characteristics of our research, explaining the choices we've made and which methods and methodology we used to answer the questions raised formulated above.

1.4 Methodology

An overview of the most important methodological aspects of the dissertation will be given through the main characteristics of our doctoral research.

1.4.1 Demarcation of the research

This dissertation is the result of an interdisciplinary research project in which the initial research objective, 'Do EU trade arrangements enhance social development in the Global South', was gradually narrowed down to examining the potential impact of the Association Agreement between the EU and Central America on labour rights in Central America, in particular in the Costa Rican pineapple industry.

1.4.1.1 Potential impact and relevance

We chose to focus on the relevance and potential impact of EU social trade arrangements instead of concrete changes in the labour conditions of workers as a consequence of EU trade, also termed outcome impact (Van den Putte, 2016) or ultimate impact (Orbie & Van Roozendaal, 2017). During the exploratory phase of the research, certain aspects of EU trade were found that deserved a closer look, even though it was too early to expect immediate concrete impact or the outlook for such impact was unpromising. The civil society mechanisms in particular drew our attention as an interesting arena to connect local trade unions with EU policy.

Researching impact certainly has its merits, nevertheless, it should be noted that such research also bears certain challenges or weaknesses. First, there is ambiguity about what impact is. Hearn & Buffardi (2016) illustrate this through the variety of definitions of impact given by international developmental organisations. The scope can be narrow, "the difference in the indicator of interest with and without the intervention (World Bank as cited in White, 2009)", or very broad "positive and negative, primary and secondary long-term effects produced by a development intervention, directly or indirectly, intended or unintended (OECD, 2002)". Second, the disagreement on the definition of impact is extended to methodological discussions. Even within policy fields and academic disciplines there are different views on how impact should be measured and which methods are considered sufficiently robust (White, 2010). The third weakness of researching impact is that most often little attention is given to the political aspect of such research. Indeed, as debates focus on technical and methodological issues, questions related to power –who defines what impact is? how it is judged?– are often neglected (Hearn & Buffardi, 2016). The final criticism on impact studies is

that, even when impact is interpreted in its broadest sense, it only focusses on effective changes that have taken place, thereby neglecting the potential something can have. Whereas potential impact is mapped and analysed in *ex ante* impact assessments, potentiality disappears from the radar during the implementation phase.

These arguments, together with the findings of our exploratory research and the practical consideration that the EU-CA AA had only been applied provisionally one year when our research project was initiated, prompted us to adopt a more open attitude and look at the potential impact though the assessment of relevance as operationalised in the previous section.

1.4.1.2 Central America and Costa Rica

The main argument to focus on Central America is that no other academic research efforts have been made so far to analyse the EU-Central American trade relations and its trade-labour linkage in particular. In addition, all Central American countries have been GSP+ beneficiaries and the EU-CA AA has been provisionally applied since 2013. We therefore hoped to be able to discern the potential consequences of the EU social trade arrangements.

Even though other Central American countries are more notorious for labour rights violations, such as Guatemala and Honduras, Costa Rica was chosen for two reasons. First, since extensive field research was necessary for empirical data collection, the safety of the researchers had to be safeguarded. Trade union rights are a contentious topic in Central America and researchers focussing on this issue are not always welcomed with open arms. Moreover, trade unions are experiencing life-threatening violence because of their trade union activities in other Central American countries (ITUC, 2018). Such circumstances would be especially perilous for the research concerning the working conditions in the agricultural sector which requires a longer stay in a remote area.³ Accordingly, these circumstances led to the selection of a country we believed to be the safest option. Second, of all Central American countries, Costa Rica scores the best on social development (OECD, 2017). It also scores well for political and social integration in the Bertelsmann Stiftung Transformation Index (2016), which is confirmed by the Civicus Monitor (2018) that evaluated the Costa Rican civic space as 'open'. We therefore consider Costa Rica to be a most-likely case for a positive correlation between the EU social trade instruments.

1.4.1.3 Agricultural sector and pineapples

Worldwide, the agricultural sector is infamous for poor working conditions and income distribution (Cheong et al., 2013). Hurst (2007) wrote a comprehensive account on the precarious situation of agricultural wage workers. Concretely, this situation can be attributed to four factors: first, the employment is often unstable, temporary and poorly paid, with wages well below those earned by industrial workers. Second, the sector also attracts the most vulnerable workers, which are often young, migrant and low-skilled (see also Barrientos & Kritzinger, 2004). Third, agricultural work is by its nature physically demanding, with a high risk of accidents due to the operation of machinery and the intensive use of chemicals. Yet, agricultural workers are among the least well protected in terms of access to health care,

³ This was conducted by Annelien Gansemans.

workers' compensation and insurance. Fourth, whereas collective bargaining is one of the principal instruments for defining the terms and conditions of employment, it is often not a significant feature in the agricultural sector. This is mainly because the respective institutions are lacking, governments do not encourage such negotiations, and trade unions tend to be weak (see also Oxfam, 2018).

The Costa Rican pineapple sector was selected because it is a relatively recent and booming industry (see *infra*). The expansion of this export crop has affected local communities and workers and raises the issue of the effectiveness of current labour governance mechanisms. Moreover, the industry is confronted with many of the environmental and social challenges that booming export regions face around the world. In contrast to the banana industry, which has a long and eventful trade union history, we believe that the younger pineapple industry can give interesting indications of the potential consequences of EU social trade arrangements.

Considering our research focus on EU bilateral trade agreements, the emphasis of the analysis in the articles and later on in the conclusions will also be on this instrument. The findings will therefore relate mainly to the EU-Central American Association Agreement. Whenever pertinent, these will be linked and compared to the unilateral and hybrid instruments. At unilateral level, there is only the GSP+ regime to compare with. In contrast there is a wider variety in the range of hybrid instruments. Here too, our focal point has been on the EU-Central American trade relations and the Costa Rican pineapple industry. The three public-private initiatives considered are the Ethical Trading Initiative (ETI) and the National Platform for the responsible production and trade of pineapples (Platform) in which EU member states, respectively the UK and the Netherlands, played an important role for the establishment of the initiative and the CSR workshops organised in the context of the EU-CA AA (see article 6 for a detailed description).

1.4.2 Interdisciplinarity

The research objective and research questions introduced above cannot be addressed by one discipline alone as it requires a macro (EU trade policy) and micro (farm workers and rural households) level analysis. Our research project was therefore conceived to be interdisciplinary to bridge two disconnected disciplines: political science to study the motivations behind and implementation of EU decisions on social trade conditionality and agricultural economics to study the working conditions in pineapple plantations.

The research project was carried out by two PhD students, Deborah Martens and Annelien Gansemans, with different disciplinary backgrounds, respectively political science and agricultural economics. Although their final thesis stands on their own and have an individual focus, both the EU politics and agricultural field perspectives are integrated in the research.

Both disciplines were integrated in a multi-level approach which is reflected in the following research stages: First, theoretical frameworks and concepts derived from different literature strands are used. This includes institutional theory and literature on legitimacy and

effectiveness of public-private governance, deliberative democracy and EU external relations (political science), but also on the impact of fair trade and private standards and literature on rural livelihoods (agricultural economics). In addition, the researchers relied on knowledge from the industrial relations literature, management literature and the emerging body of global value chains perspectives (where political science and agricultural economics are, among other disciplines, combined).

Second, both researchers and their (co-)supervisors collected data together. During joint exploratory field research in Costa Rica, they conducted interviews with trade unions at sectorial and national level, national government officials, EU officials and other relevant actors; field visits to banana and pineapple plantations; focus groups with trade unionists and farm workers and organised an academic workshop at the *Universidad Nacional de Costa Rica* to get more acquainted with the national context and challenges for improving workers' rights. When appropriate, Deborah and Annelien conducted (Skype) interviews with trade unions and NGOs together or participated together to pertinent events in Brussels. Third, a mixed methods approach was applied for the data analysis whenever relevant. In addition to the different data collection methods, the researchers cooperated in Qualitative Comparative Analysis, case study and content analysis.

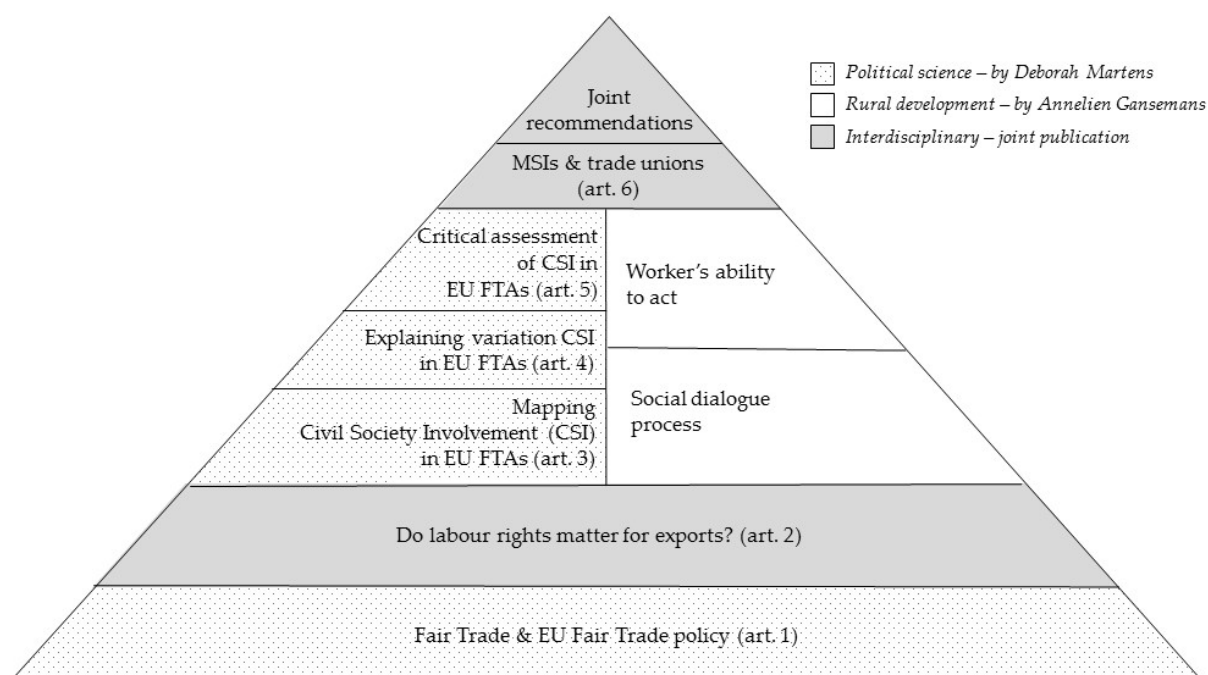


Figure 2: Visualisation unidisciplinary and interdisciplinary publications

The interdisciplinary collaboration resulted in three types of outcomes. First, two joint publications were written: the first sets the scene of the EU trade-labour linkage and pineapple exports to the EU at macro-level (article 2 of this dissertation), while the second combines most of our insights acquired during the research project and analyses the micro-level (article 6).

Second, our research has culminated in the formulation of joint recommendations included in the conclusions of the dissertation. Finally, a less tangible outcome of our interdisciplinary research are the cross-fertilisations between the researchers throughout the process.

Figure 2 visualises how the interdisciplinary research process evolved. It also shows that the articles that were not developed together served as building blocks for further collaboration. Our most important learnings on conducting interdisciplinary research are listed in the concluding reflections in the conclusion of this dissertation.

1.4.3 Mixed methods

As introduced in the previous section, a mixed methods approach was adopted to address our research question. More concretely, empirical data was collected through a large number of interviews (85) conducted in Belgium, Costa Rica and Honduras, two focus groups with trade unions in Costa Rica, 14 non-participants observations of the civil society meetings in Brussels, Costa Rica and Honduras, and a survey with members of the EU Domestic Advisory Groups. Annex A contains a detailed overview of the data collection.

Moreover, data was analysed through legal document analysis, case study and content analysis. Since each article in the main body of the dissertation carefully explains the methodology used, we will not further elaborate this here.

In addition, we have mentioned how crucial our exploratory research in Costa Rica turned out to be. Retrospectively, we noticed that most decisions and the common threads of our research stem from our field work there. It has laid the basis for an abductive approach in the majority of our research, in which we went back and forth between empirical information and theoretical knowledge.

1.4.4 Overview Articles

The main body of this dissertation consists of six articles that were written over the course of the PhD. Table 3 gives an overview of these articles and their research questions, research approaches, main findings and conclusions as well as their central concepts and how they focus on labour rights. Figure 3 then illustrates how the six articles relate to each other.

Table 3: Overview content articles

	Research questions	Research approach	Findings & conclusions	Central concepts / Focus labour rights
1. The EU and Fair Trade: hands-off? Deborah Martens (DM) & Jan Orbie (JO) (Book chapter in Handbook on the EU and International Trade, 2018)	What does Fair Trade mean? What is the EU position concerning Fair Trade?	<ul style="list-style-type: none"> - Developed a conceptual framework to schematise meanings of Fair Trade along two axes: reformist vs revolutionary change and market vs state involvement - Applied framework to current and past EU Fair Trade initiatives 	<ul style="list-style-type: none"> - Fair Trade has opposing ideological and philosophical meanings - EU position has evolved towards a mainly neoliberal trade agenda. Piecemeal approach for Fair Trade objectives 	<ul style="list-style-type: none"> - Fairness in trade - Free trade - EU trade policy <hr/> <ul style="list-style-type: none"> - Labour rights as one aspect of Fair Trade - Trade labour linkage
2. Do labour rights matter for export? A Qualitative Comparative Analysis of pineapple trade to the EU Annelien Gansemans (AG), DM, Marijke D'Haese (MD), JO (Politics and Governance, 2017)	Are exporting countries complying with labour standards rewarded with a larger export share to the European market, especially in trade of agricultural products?	<ul style="list-style-type: none"> - Qualitative Comparative Analysis (= causes-of-effects approach, explains different causal patterns) - Explaining the share of pineapple exports to the EU compared to other destinations - Conditions: labour rights, institutional quality, tariffs, distance 	<ul style="list-style-type: none"> - EU discourse promoting labour standards misses leverage effect on actual export decisions - Zero tariff necessary for a large export share to EU - Labour standards protection can make a difference when institutional quality's weak - Latin American >> African cases 	Determinants of trading relations <hr/> <ul style="list-style-type: none"> - Trade labour linkage - Race to the top/bottom - Collective Bargaining rights = enabling rights - Ethical consumerism

<p>3. Mapping variation of Civil Society Involvement in EU trade agreements: A CSI Index</p> <p>DM, Lore Van den Putte (LVdP), Myriam Oehri (MO), JO</p> <p>(European Foreign Affairs Review, 2018)</p>	<p>What are the similarities and differences in civil society involvement (CSI) across the new generation EU FTAs?</p>	<p>- Systematic and comparative analysis of treaty provisions establishing CSMs in EU FTAs</p> <p>- Analysis based on an original codebook and resulted in a CSI Index</p>	<p>- Some form of template</p> <p>- Large variation in CSI:</p> <ul style="list-style-type: none"> • High (Canada, Korea) • Medium (Georgia, Moldova, Vietnam, Ukraine) • Low (Central America, Singapore, Peru-Colombia, Ecuador) 	<p>- Civil society involvement</p> <p>- Institutional perspective</p> <hr/> <p>No specific focus on labour rights</p>
<p>4. Explaining variation of civil society involvement in EU trade agreements</p> <p>MO, JO, DM, LVdP</p> <p>(submitted to Journal of European Integration)</p>	<p>How can the variation in CSI in EU FTAs be explained?</p> <p>What determines CSI in EU FTA provisions?</p>	<p>Five explanations were operationalised by calibrating different data sources into four scores which allowed for a systematic and comparative analysis</p>	<p>- No explanation can fully and exclusively account for CSI variation</p> <p>- Most powerful explanation: third country resonance = the higher civil society participation is in a third country, the higher CSI will be in an EU FTA with that country.</p> <p>- To a smaller extent: EU experience</p> <p>- Not valid: EU protectionism, and EU norms, EU-third country trade power</p>	<p>- Civil society involvement</p> <p>- Determinants of FTA provisions/ negotiation outcome</p> <p>- Importance domestic context trade partner</p> <hr/> <p>Explanations on EU protectionism (low labour costs in third country) and EU norms (labour right violations)</p>

<p>5. Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements</p> <p>JO, DM, MO, LVdP</p> <p>(Third World Thematics, 2017)</p>	<p>Do civil society mechanisms legitimise the underlying neoliberal orientation of the agreements through co-optation of critical actors?</p>	<ul style="list-style-type: none"> - Analysis of experience and perception of CSM participants - Data: survey with EU CSM participant, interviews, non-participatory observation 	<ul style="list-style-type: none"> - no clear evidence of co-optation - participants are aware of risks participation, however, take a constructive stance - diverging perspectives between non-profit and business actors risk reinforcing existing power asymmetries 	<ul style="list-style-type: none"> - Civil society involvement - Co-optation - Insider-outsider dilemma - Diverging interests participants - Linkage free trade & sustainable development - More critical position labour representatives
<p>6. Trade unions in multi-stakeholder initiatives: what shapes their participation?</p> <p>DM, AG, JO, MD</p> <p>(Sustainability, 2018)</p>	<p>How to assess trade union participation in multi-stakeholder initiatives (MSIs)?</p> <p>What enables and constrains this participation?</p>	<ul style="list-style-type: none"> - Developed analytical framework combining structural and agency dimensions: MSI design and trade union's power resources - Within-case analysis of three MSIs in EU-Costa Rica pineapple supply chain 	<ul style="list-style-type: none"> - MSI design and implementation: shortcomings in representativeness, procedural fairness and consensual orientation - Trade union power resources: strong network embeddedness & improved infrastructural resources 	<ul style="list-style-type: none"> - Civil society involvement - Determinants of participation - Participatory governance & deliberation - Power asymmetry in MSIs

		<ul style="list-style-type: none"> - Data: interviews, focus groups, non-participatory observation, document analysis 	<p>had positive effect on participation. Lack of internal solidarity and unfavourable narrative resources affected participation negatively</p>	<ul style="list-style-type: none"> - Labour rights issues in Costa Rican pineapple industry - MSIs created to improve sustainable development, - trade union participation to these MSIs
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Figure 3 visualises the bigger picture constituted by the articles in the main body of this dissertation and how these separate publications are related to one another. Whereas the first article is a more general piece discussing Fair Trade and the EU's position herein, the others are placed on one of the two arrows that connect the EU as a trade actor, or importer, to workers at the bottom of the supply chain. As such the arrows move from the macro to the micro level. Each arrow represent a theme central to this dissertation, namely 'EU-Costa Rica pineapple trade' and 'CSI in EU trade agreements'. The final article covers both topics.

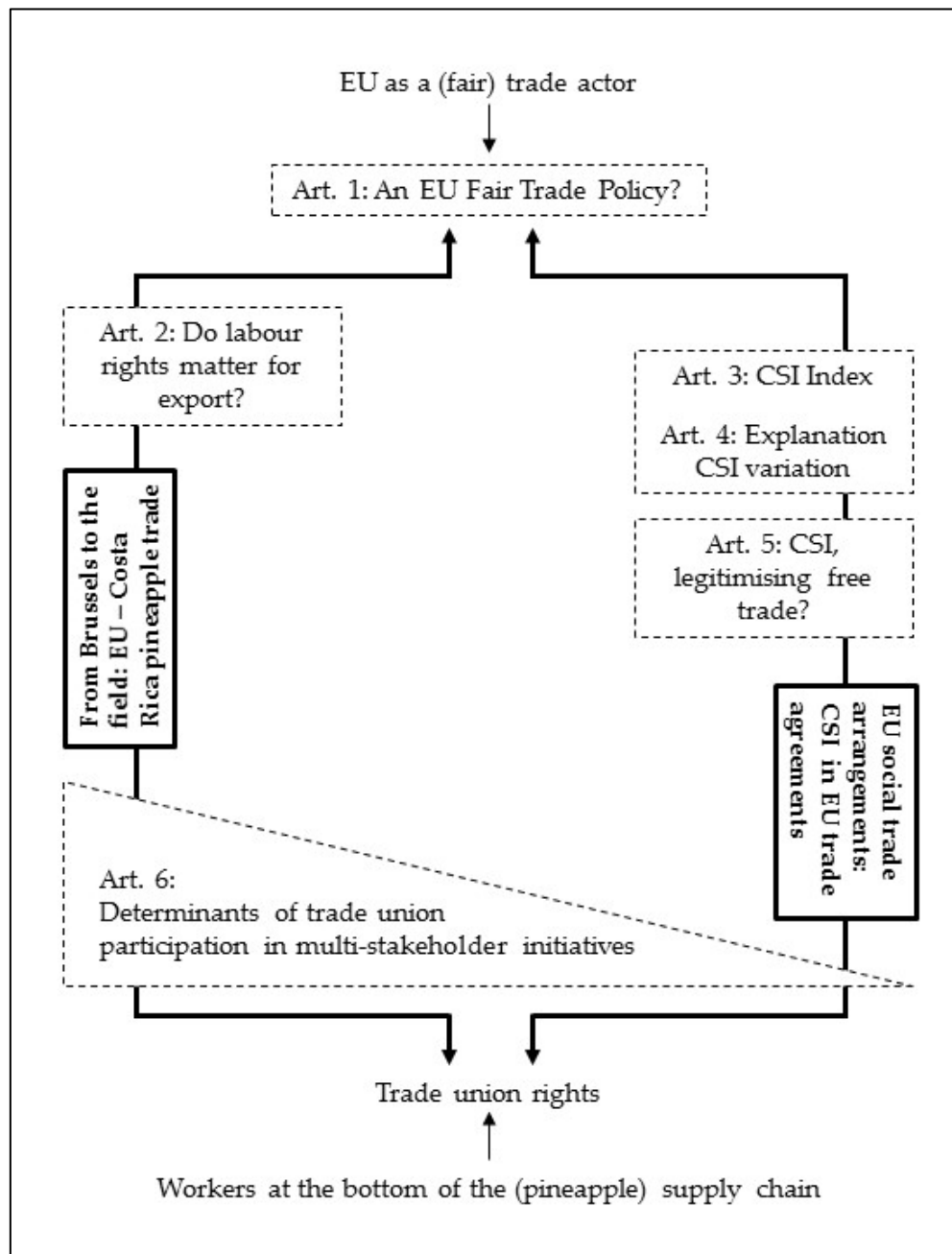


Figure 3: Overview and relationship of the articles

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2. Costa Rican context

Costa Rica, a country located on the Central American isthmus counting nearly five million inhabitants, is acclaimed for its political stability and social progress in a region of violence and high social inequality. Its life satisfaction levels are among the highest in the world: Costa Rica tops the Happy Planet Index (2018) and is ranked 13th in the World Happiness report (Helliwell et al., 2018). The country has invested for decades in public education and healthcare resulting in a near universal access to these services (OECD, 2017a). With a GDP per capita income of \$11,677 in 2017, Costa Rica, an upper-middle income country, has higher standards of living and lower poverty rates than other countries in the region (World Bank, 2018). Concerning income inequality, Costa Rica is located on the Latin American average. Even though the country used to be one of the least unequal Latin American countries, income inequality increased sharply during the last two decades, reaching a Gini coefficient of 0.49 in 2012 (where one is completely unequal) (OECD, 2017b). However, in general, Costa Rica's socio-economic performance is evaluated as positive, even impressive. This progress is materialised through the country's accession discussions taking place since 2015 to join the Organisation for Economic Co-operation and Development (OECD). The fundamental values of this 'rich country club' are the commitment to pluralist democracy based on the rule of law and the respect of human rights, adherence to open and transparent market economy principles and a shared goal of sustainable development (OECD, 2015).

According to Trejos (2013) Costa Rica's development can be attributed to three complementary sets of policies. The first set involves the substantial investments and unusual decisions made by Costa Rica during the 20th century concerning democracy, peace, education, healthcare and the environment. These explain the current high levels of human and institutional development and labour productivity. The second set refers to the stabilisation and liberalisation measures undertaken after the 1980-1982 debt crisis, which have allowed Costa Rica to maintain macroeconomic stability. The third set of policies refer to the measures opening the Costa Rican economy and promoting its exports and attracting foreign direct investment, amounting in diversification, technological improvement, higher incomes and job creation.

The relevant aspects of these policy sets will be discussed below. To provide a comprehensive picture of Costa Rica, we will discuss its neoliberal turn as well as the nation's trade and agricultural policy. This is then followed by an overview of Costa Rica's main labour issues and how these persist in its pineapple sector.

2.1 Costa Rica's neoliberal turn

Costa Rica used to be an agro-exporting economy, highly dependent on the export of traditional agricultural products: coffee and bananas (Ferreira et al., 2018). To be less vulnerable to external economic shocks, Costa Rican authorities began to carry out a new strategy based on import substitution industrialisation throughout the 1960s and 1970s. In addition to joining the Central American Common Market in 1963, this resulted in the creation of new industries, such as textiles and shoes, and the increase of the share of manufactured goods to Costa Rica's export. Until the 1980s Costa Rica experienced high rates of economic growth. Its economic model, based on social democratic tenets, generated real benefits for its population in terms of education, health and economic prosperity.

From the late 1970s to mid-1980s, the country experienced its worst economic crisis in history, which stemmed from a combination of several external and internal factors (Gonzalez-Vega, 1989; Seligson & Muller, 1987; Wilson, 1994). The Nicaraguan revolution (1978-1979) and the civil war in El Salvador (1979-1992) caused the total collapse of the Central American Common Market leading to Costa Rican exports to drop 60% between 1980 and 1986. In addition, oil prices soared while the coffee price plummeted and the banana export (the two main export commodities) declined, deteriorating the country's export income. Costa Rica's administration borrowed heavily on the international market to cover its trade imbalance, leading to an international debt of \$4 billion by 1983, one of the largest per capita debts in the world at that time. The incapacity of Costa Rica's administration to deal with the situation only exacerbated the situation. The magnitude of this economic crisis was unprecedented: an entire decade of economic growth was lost.

A new administration was elected in 1982 which introduced a series of neoliberal measures, including privatisation of state-enterprises, reduction of government expenditures and opening Costa Rica's economy to international trade through non-traditional export promotion and reductions in import tariffs (Clark, 2001). These policy measures were prescribed by the Washington-based financing institutions (International Monetary Fund, World Bank and US Department of Treasury) and were in line with the 'Washington Consensus' dictating a neoliberal structural reform agenda in exchange for loans to developing countries disrupted by economic and financial crises in the 1980s. Nevertheless, opinions vary whether these institutions (Marois, 2005) or internal pressure groups (Wilson, 1994) had the most decisive influence in Costa Rica's neoliberal turn. Contrary to the majority of other Latin American countries, such as Peru, Mexico and Brazil, that opted for a radical approach to implement similar policy prescriptions, Costa Rica carried out the reforms gradually, similarly to Uruguay and Chile (Arnaut, 2013; Clark, 2001). Overall, the abandonment of the import substitution industrialisation model and the structural reforms are considered to have had a positive impact on Costa Rica's economy.

The reforms laid the foundations of a new economic model based on export diversification (see *infra*) and the attraction of foreign direct investment. Free trade zones, where fiscal

benefits are granted to companies investing in that area, were created to attract foreign firms and promote new exports (Ferreira et al., 2018). These free trade zones, or *zonas francas*, have played a key role in Costa Rica's economic development and export supply since the 1980s. For instance, the arrival of Intel, investing \$300 million in a microprocessor plant in 1997, has been, directly and indirectly, responsible for the shift in Costa Rica's top exports from coffee and bananas to electronic products (see Ferreira & Harrison, 2012). In addition to electronics, Costa Rica successfully attracted foreign firms in medical equipment and service sectors. By 2015, the structure of Costa Rica's economy had become similar to that of service-oriented OECD countries (OECD, 2017b). Agriculture, however, still accounts for 5% of GDP in Costa Rica compared with 2.5% in the OECD on average. Besides services (76%), industry (19%) also continues to play an important role.

In any respect, Costa Rica's neoliberal turn has had a far-reaching impact on its political economy and society. Even though Costa Rica remains a social democratic country, we see the prioritisation of neoliberal policies, where the role of the state is being limited in favour of the free functioning of the market. The remainder of this section will describe how the country is proactively looking for new markets through the conclusion of free trade agreements, and how, as a result from export diversification, Costa Rica became the world biggest exporter of fresh pineapples. Finally we will also show how the new dominant ideology has impacted industrial relations in the country.

2.2 Trade policy

As introduced above, Costa Rica embarked upon a series of liberalisation measures after its financial crisis. Indeed, pursuing free trade fits with Costa Rica's outward oriented development policy. The measures taken can be classified in four broad categories: the overall reform of the Costa Rican trading system, conclusions of trade agreements, import policy measures and export policy measures (OECD, 2017a). In the remainder of this section I will focus on the trade agreements that Costa Rica has concluded, as it is most relevant for the topic of this dissertation.

To support the process of openness and greater integration with international markets, Costa Rica has been negotiating and signing bilateral investment agreements as well as multilateral, regional and bilateral trade agreements since the 1990s (SICE, 2019). The investment agreements were mainly concluded in the 1990s with a number of European (Czech Republic, France, Germany, Netherlands, Spain, Switzerland), Latin and North American (Argentina, Canada, Chile, Paraguay, Venezuela) and Asian (Korea, Taiwan) countries, except for one with Qatar in 2010⁴.

⁴ Date of signature, not entry into force

Costa Rica has been active in the multilateral trading system, where it became a member of the GATT in 1990 and was a founding member of the WTO in 1995 (WTO, 2019). As such, it grants most-favoured-nation treatment to all its trading partners. Costa Rica signed the plurilateral WTO Information Technology Agreement as well as the WTO's intellectual property agreement and changes made to it concerning patents and public health. It also participated to the negotiations on financial services, accepting the Fifth Protocol to the General Agreement on Trade in Services. Costa Rica has been involved in several dispute cases, as complainant, respondent and third party.

At regional level Costa Rica is member of the Central American Common Market (1960), the Free Trade Agreement between Central America, the Dominican Republic and the US (CAFTA-DR, 2004), the Free Trade Agreement with CARICOM, the Caribbean Community (2004), the EU-Central American Association Agreement (2012) and most recently the Free Trade Agreement between Costa Rica, Guatemala, Panama and the EFTA states (Iceland, Liechtenstein, Norway and Switzerland) (2013).

Finally, at bilateral level, Costa Rica has concluded trade agreements with the Dominican Republic (with CACM members) (1998), Chile (with CACM members) (1999), Canada (2001), Panama (with CACM members) (2002), Singapore (2010), China (2010), Peru (2011), Mexico (with CACM members and Panama) and Colombia (2013). Costa Rica has recently also signed a Free Trade Agreement with Korea, which has not yet entered into force.

In sum, the enumeration above illustrates how Costa Rica's has successfully assured beneficial market access for its exports. This is a concrete consequence of Costa Rica's quest for new markets since the 1990s, in order to be able to export more and to be less dependent on the United States, which has been historically the leading market for the nation's exports (Ferreira et al., 2018, interview 32).

In 2017, the main export sectors were agriculture (27%), medical equipment (27%) and the food industry (15%) (PROCOMER, 2018). The most important export products were medical devices (25%), bananas (10%) and pineapples (9%). These were exported to Costa Rica's main export destinations in the United States (41%), the rest of Central America (24%) and the European Union (22%).

2.2.1 EU-Central America Association Agreement

The EU-CA AA was negotiated between the EU and Panama, Costa Rica, Honduras, Guatemala, Nicaragua and El Salvador from October 2007 to May 2010. During the nine negotiation rounds there was only little public and scholarly attention dedicated to the agreement both in the EU and in Central America. Mainly because the EU was pursuing a trade agreement with Peru and Colombia during the same period and most concerns were focussed on the human rights situation in Colombia. In Central America, CAFTA-DR, the

trade agreement with the US in force since 2007, remained the centre of attention (Bierbrauer & De Goede, 2011).

Nevertheless, the EU aimed at securing access to the Central American market which was at least the equivalent to that of the US, entailing that the concessions in the agreement would be as far-reaching (Woolcock et al., 2012). Indeed, the trade pillar of the Association Agreement is a comprehensive free trade agreement, covering over 95% of tariff lines and trade as well as, among others, border services, establishment (but not investment protection), public procurement, intellectual property rights and regulatory barriers (such as technical barriers to trade and sanitary and phytosanitary measures) (Araujo, 2016).

According to the Commission's implementation report (2018b) the trade part of the agreement has seen a new vitality as EU trade flows with Central America grew by 7.2% in 2017. Trade in services between the two regions continued to increase and EU investment in the region remained relatively strong. In addition, the agreement is said to also have furthered regional economic integration in Central America. Overall, this draws a rather positive picture of the trade-aspects of the agreement.

In 2017, there was a record in fruit exports from the region, with an annual 20% rise lifting the sector to almost 31% of total exports to the EU (European Commission, 2018a). The main products are bananas and pineapples, and Costa Rica is the main exporter of fruit with 76% of the region's exports to the EU.

In addition to the trade pillar of the EU-CA AA, which has been provisionally applied since 2013, there are two other pillars, respectively on cooperation and political dialogue. Since the EU-CA AA is still awaiting ratification by all the EU member states⁵, these pillars have not yet entered into force. This had led to criticism by Central American civil society as well as the European Parliament. Interviewees explained how those pillars had contributed to the legitimacy of the agreement during the negotiations, as it was 'more' than just a trade agreement (interview 22, 45, 53). However, due to the long ratification process, civil society are said to be disillusioned about the EU's intentions. In addition, a recent report produced by the European Parliament's International Trade Committee states that the non-application of these two pillars creates an imbalance between trade-related issues and political issues, such as promotion of democracy and human rights (European Parliament, 2018).

2.3 Agricultural policy

Consistent with the reforms introduced above, major agricultural reforms were undertaken in Costa Rica from the mid-1980s onwards. The features of this neoliberal approach were and still are the liberalisation of agricultural trade, the promotion of more profitable non-traditional agricultural exports, as well as internal deregulation, dismantling subsidies and

⁵ At the time of writing Austria, Belgium and Greece have not yet ratified the Association Agreement (General Secretariat of the Council, 2019).

other incentives for small farmers and basic grain production, and the enhancement of rural non-farm activities as an additional source of income for small farmers (Botella-Rodríguez, 2018). As we are interested in the link between agriculture and trade, we will focus on the first two features with an analysis of the linkages between liberalisation and export diversification through the promotion of non-traditional agricultural products.

Non-traditional export crops include: crops that have not been produced in a particular country before; crops traditionally produced for domestic consumption but now being exported, and crops now exported to new markets (Barham et al., 1992). Coffee, cotton, cattle, sugar and bananas are considered to be the five traditional Central American exports. Costa Rica has promoted non-traditional products in which it had a comparative advantage (OECD, 2017a). Even though Costa Rica remains a successful supplier of traditional products, such as bananas, coffee and sugar, this diversification efforts have led to the cultivation of, among others, pineapple, African palm, citrus, melon, mango, root vegetables, peach, flowers and ornamental plants.

Throughout the 1980s, the Costa Rican government reduced state support for traditional smallholder crops produced for the domestic market, while creating a range of subsidies and incentives for producers engaged in non-traditional crops and for exporting firms (Botella-Rodríguez, 2018; Voorend & Robles Rivera, 2011). These incentives included tax exemptions and facilitated access to credit and land (OECD, 2017a). The approach attracted important foreign direct investment, mostly US firms, into agro-industrial activities (Botella-Rodríguez, 2018). Foreign investment is particularly high in the cultivation of bananas, pineapples and palm. Chiquita, Dole and Fresh del Monte control more than 50% of the plantations for these crops (FAO, 2014). The diversification was also symbolised by an increase of high-tech agricultural producers that began to produce higher value exports (Ferreira et al., 2018). Examples of these new agro-industries are peeling, drying and roasting–vacuum packed coffee, packing of fruits and vegetables, the milling of rice and sugar cane and concentrated orange juice.

This diversification of the Costa Rica's agricultural supply along with the nation's proactive opening of new markets through its trade policy resulted in a dynamic, non-traditional agricultural export sector. It has contributed (in addition to the changes made in other sectors) to Costa Rica's economic growth, as a series of products has recently emerged as important foreign exchange generator (e.g. pineapples) (Ferreira et al., 2018). However, on the down-side it has brought about a dualistic structure in the Costa Rican agricultural sector: a strong agricultural export sector coexisting with a low-productivity, traditional sector producing mostly for the domestic market (OECD, 2017b). Indeed, the spillovers from the successful export sector dominated by medium-large farms to the weaker traditional sector, which is characterised by less competitive, small-scale farms has been limited. A second, and related, problematic issue is food security. As public support for small farmers has been dismantled and borders have been opened to artificially cheap and lower quality food from developed

countries, Costa Rica's degree of reliance on imported food is high (Botella-Rodríguez, 2018). In 2008 rapidly rising international food prices demonstrated the problem for food security such dependence poses and Costa Rica has been developing strategies since then to counter this issue (OECD, 2017a).

2.3.1 The Costa Rican pineapple boom

Pineapple in particular has been a very successful crop. It has been cultivated in Costa Rica for more than 50 years. In its early stages, pineapple production was primarily grown for local consumption and to a some degree for processing (Ferreira et al., 2018). From 2000 onwards the country's pineapple industry began to expand rapidly, from 11,000 ha to more than 44,000 ha in 2018, producing more than 3 million tonnes (CANAPEP, 2018; FAOSTAT, 2018). This boom can be explained by four complementary factors: the pioneering role of the Pineapple Development Company - Del Monte (PINDECO), the introduction of a new pineapple variety in Costa Rica, the conducive export promotion of non-traditional crops and a growing international demand for tropical fruits.

First, at the end of the 1970s, PINDECO turned pineapple production into a highly intensive monoculture, requiring high levels of technology. The Del Monte subsidiary contributed to the development of a highly efficient production system, in terms of the technology used, stimulus for research (e.g. for the development of new varieties) as well as the proper treatment of the fruit in packaging plants, efficient transportation and its connections to the international markets (Ferreira et al., 2018; Gonzalez, 2004). In sum, PINDECO gave a definitive thrust to expand pineapple production for export. It was also this company that introduced a new commercial variety of pineapple called MD2 or 'golden' pineapple, the second explanatory factor for Costa Rica's pineapple boom. This variety gained in popularity because it is sweeter, higher in vitamin C, provides higher yields and lasts longer than the Smooth Cayenne variety, the common variety back in the 1980s. This variety thrives well in Costa Rica due to ideal agro-ecological factors (soil, climate, temperature and humidity). Third, as discussed above, the policy context providing incentives for the export of non-traditional agricultural products attracted investors, which led to unprecedented growth in terms of area planted and total production. In addition, the available logistic infrastructure and commercialisation channels of banana multinationals played an important role (Gonzalez, 2004; Guevara et al., 2017). Whereas other Latin American and African producers also introduced this MD2 variety in order to adjust to the new market requirement and remain competitive, they failed to compete with Costa Rica because their large-scale production conditions and infrastructure are less favourable (Krumbiegel et al., 2018; Vagneron et al., 2009). Finally, the growing demand for tropical fruit (fresh, in cans, in juices, dried, and processed) in large markets such as the US and EU, expanded the world pineapple market, with Costa Rica taking the lead.

According to the National Agricultural Census of 2014 there are 1228 pineapple farms, of which 108 farms are larger than 100 ha (INEC, 2014). This entails that 91% of the total pineapple cultivation area is concentrated in the hands of large-scale plantations. The four largest companies –Del Monte, Dole, Grupo Acón and Fyffes– represent 71% of total production. Many small farmers have left the pineapple business. Farmers that remain grow traditional varieties for the local market or processing industry because they cannot meet the international quality requirements (Faure et al., 2015).

In 2017, pineapple exports accounted for 9% of national exports or \$940,7 million (PROCOMER, 2018). Over the last ten years, pineapple became equally important as banana exports (10%) which have a longer history in the country. About half of the Costa Rican pineapples are exported to the US market and the other half to Europe, where the Netherlands, Belgium and Italy are the entry gates to the European market. It should be noted that until the 1980s, Cote d'Ivoire used to be the major exporter of fresh, Smooth Cayenne, pineapples to Europe. Its share declined from 93% in 1985 to 50% in 2000 (Vagneron et al., 2009). Now, more than 80% of all European pineapple imports are the sweet 'golden' MD2 from Costa Rica (Guevara et al., 2017).

Even though pineapple production and export contribute to the Costa Rican economy, this booming business also has an environmental and social downside. Concerning the environment, pineapple production has led to land and water pollution due to the intensive use of pesticides (see Echeverría-Sáenz et al., 2012). In addition, the pineapple expansion has had an impact on Costa Rica's forest cover. Jadin et al (2016) found related deforestation in the most ecologically valuable regions of Costa Rica. The reforestation efforts, in place to compensate the high deforestation rates in the 1980s, have increased the reforested area in general, but have not restored the ecological value that was destroyed. The social consequences will be addressed in the next section by focussing on the labour issues in the sector. In order to address these growing sustainability concerns, The UNDP launched the National Platform for the Responsible Production and Trade of Pineapple in Costa Rica in June 2011 (see *infra*).

2.4 Labour issues⁶

In general, Costa Rica performs well on human rights. However, Costa Rican law and its implementation is not fully in conformity with international labour rights especially in the areas of collective bargaining and collective agreements (European Commission, 2016). Indeed, while Costa Rica is characterised by political and social stability, social dialogue between employers and workers remains fragmented and weak. Unionisation is especially

⁶ Written in collaboration with Annelien Gansemans.

low (1%) in the private sector, compared to 30% in the public sector (OECD, 2017b). The two main barriers for active and effective worker representation and unionisation are the need for labour code reforms and its effective implementation and the prevalence of alternative worker representation organisations in an anti-union culture.

First, even though the nation has ratified the most important ILO conventions, its labour code needed to be reformed to enable stronger social dialogue and to design and implement labour market policies in a timely fashion (OECD, 2017b). In 2016, after more than a decade of negotiations, a labour proceedings reform bill was adopted (Act No. 9343), which is considered to be the most profound reform of the Costa Rican labour code since its enactment in 1943. The major changes in the law include quicker labour proceedings through oral litigation instead of relying exclusively on written filings and motions, less strict strike regulation, the reorganisation and specialisation of labour jurisdiction, the elimination of cost categorisation and the provision of legal assistance free of charge (ILO CEACR, 2017). If implemented properly, the reforms will improve Freedom of Association and Collective Bargaining in the country, especially in the private sector (interview 82).

Concerning the implementation of its labour code, Costa Rica's labour inspectorate needs to be improved as its functioning is hampered by a lack of resources which affects the inspectors' daily work. In addition to being understaffed, there were 92 inspectors in 2015 which is considerably below the ILO benchmark, these inspectors lack access to rural areas, map locations, transport and digitalisation of records which impedes effective enforcement (OECD, 2017b). The effectiveness is also limited because inspectors are not entitled to collect fines on site (interview 29). Long juridical procedure, up to eight years, discouraged workers and unions to submit a dispute, because it is too costly and the chances on reinstalled employment are low. Hopefully the labour reform introduced above, which came into force in 2017, will address this issue in practice.

Second, Costa Rican labour law contains a unique feature that permits the formation of solidarist associations, known as *solidarismo* or yellow unions. Solidarist associations represent the workers in one business or enterprise, they seek to promote workplace harmony and dissociate themselves explicitly from trade unions which are perceived and framed as being conflictual (Banana Link, 2009). Their most important function is a saving fund for workers to which both employers and affiliated workers contribute. Workers can borrow money and benefit from a Christmas bonus, severance payment and school material amongst others. These tangible benefits are an important incentive to join a solidarist association.

Even though these solidarity associations are not permitted by law to negotiate working conditions and labour rights (Castro Méndez, 2017), they advanced an alternative approach to solve labour dispute, namely through the formation of a permanent workers' committee. The leaders of the company's solidarist association mostly organise the creation of these committees and are then elected by the workers to represent them in the committee (Abdallah Arrieta, 2008). However, the committees have no independence from management and no

legal means to challenge the actions of the employers (Mosley, 2008; Sawchuk, 2004). Due to low unionisation rates in general and the lower legal threshold for permanent committees (3 workers) than for trade union (12 workers) to be recognised as a bargaining unit, there is an enormous disproportion between the number of direct agreements (126) and collective bargaining agreements (29) in the private sector (ITA, 2017).

Even though the Labour reform represents a silver lining for the achievement of Freedom of Association and Collective Bargaining in Costa Rica, the prevalence of *solidarismo* is emblematic for the dominant anti-union culture in the country. Both employers and workers themselves tend to resist the creation and functioning of trade unions. This attitude started in the 1980s when long-lasting strikes in the banana sector in the Pacific region of Costa Rica led to the relocation of the plantations and consequently to job losses and an increase in poverty (Robert, 2008). This example has been put forward in a defamation campaign by employers and solidarist associations, which is fuelled by an important sector of the Catholic Church, that claims trade unions attempt to destroy the banana industry and the country. It should be noted that this incident coincides with the aftermath of Costa Rica's economic crisis and neoliberal turn. This period had detrimental consequences for trade unions in Costa Rica and the current anti-union culture stems from this context of deregulation and austerity measures in which private employers created evasive structures and adopted a strong antiunion attitude (Frundt, 2002). From this period onwards, a serious decrease in unionisation is observed, coinciding with a rise of solidarist associations (Sawchuk, 2004). While trade unions still have a negative reputation in Costa Rica, *solidarismo* is promoted by most influential actors in the country. Costa Rican employers and even officials explain this is a unique Costa Rican model, part of the country's exceptionalism (interview 13, 14, 24). However, the ILO as well as national and international trade unions have asserted that solidarist associations, permanent committees and their direct agreements undermine the role of independent trade unions in protecting workers' rights (Banana Link, 2009; ILO CEARC, 2010; ITUC, 2007). In addition to the legal hurdles, this constraining context explains why trade union membership is low in the Costa Rican private sector.

2.4.1 Labour issues in the pineapple industry

The Northern region bordering Nicaragua accounts for 56% of the national pineapple production (Guevara et al., 2017). It is also one of the most economic and social vulnerable regions of the country (García & Salazar, 2016). For many low skilled workers the pineapple industry is the sole employment provider in the area (Guevara et al., 2017). The Ministry of Labour reported that 31,340 workers are directly employed by one of the officially registered 262 pineapple producers (CCSS, 2016). This coincides with the 32,000 jobs estimated by the Costa Rican chamber of pineapple producers (CANAPEP, 2018). However, this number does not take into account a considerable share of workers informally employed by subcontractors which are not recorded in labour statistics (Acuña, 2005). Building further on the general

context described above and drawing on field research conducted in 2015 as well as Gansemans' distinction of labour issues characterising the Costa Rican pineapple sector (forthcoming), three concerns will be discussed: the flexible contractual relations and weak employment protection, vulnerable migrant workers and limited workers' representation.

First, even though fresh pineapples are cultivated all year round and could thus generate permanent employment opportunities, there is considerable flexibility built into the pineapple labour market. This is partly due to an increased demand for temporary workers during a busy period peaking in May by reason of the rainy season. However, the main reason behind the labour market's flexibility is the hiring and firing practices of plantation management (Voorend & Robles Rivera, 2011). Costa Rican labour law prescribes a probation period of three months after which there is an accumulation of labour rights such as a notice period for dismissal and severance pay. To avoid these increased social costs, workers are dismissed before the end of their probation period, resulting in workers rotating between companies every three months (interview 29; focus group 1 & 2). In addition, employers turn to subcontractors to employ workers, often undocumented Nicaraguans.

The vulnerability of migrant workers is the second problematic labour issue in the Costa Rican pineapple sector. Migrant workers, mainly young male Nicaraguans, are often employed by subcontractors and are more prone to deal with inferior working conditions than regularised and native Costa Rican workers (Voorend et al., 2013). They face lower wages, employment without written contracts, a lack of a working permit and often also protective equipment (Ruiz & Vargas, 2014). In addition, subcontracted workers are confronted with difficulties to register as a union member and have little avenues to raise their precarious working situation (Acuña Gonzalez, 2009, 2011).

Third, unsurprisingly, the constraining legal setting, anti-union climate and prevalence of *solidarismo* described above, has led to very limited independent worker representation in the pineapple industry. Trade unions in pineapple plantations are a rare phenomenon: only six trade unions exist in the Northern region with between 8 to 80 members per firm. These unions have struggled to achieve better working conditions as collective bargaining agreements have not yet been signed in the pineapple sector at the time of data collection because the unions do not manage to reach the sufficient number of unionised workers to pass the legal threshold of 33%. In addition, the unions only exist at plantation level and there is little collaboration among them. They are fragmented and are not organised at sectoral level or affiliated to the same national federation. This situation has been raised by the ILO which has expressed its concerns on solidarist organisations hampering the functioning of trade unions in banana and pineapple plantations (ILO CEACR, 2014; ILO CEARC, 2017). There have been direct agreements concluded in pineapple plantations, however, contrary to agreements negotiated by trade unions, these agreements weaken the bargaining power of lower-productivity workers in particular and disadvantage workers because they do not result from balanced negotiations of two independent, adequately informed parties (OECD, 2017b).

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**Article 1: The European Union and Fair Trade:
hands off?**

by Deborah Martens and Jan Orbie

15. The European Union and Fair Trade: hands off?

Deborah Martens and Jan Orbie

15.1 INTRODUCTION

Since the Lisbon Treaty (2009), promoting ‘free and fair trade’ has explicitly become one of the objectives of the European Union’s (EU) relations with the wider world (TEU art 3.5, see Box 15.2). In addition, the latest trade strategy of the EU, ‘Trade for All’ (2015), emphasises the need for a value-based trade policy. It refers to the promotion of sustainable development, human rights and good governance through trade and suggests several instruments to achieve this objective, including ‘fair and ethical trading schemes’ (European Commission, 2015, p. 25).

However, it remains rather unclear what the EU’s position concerning fair trade exactly is. The academic literature on the EU’s common commercial policy rarely refers to fair trade policies. An important obstacle for clearly understanding what the EU’s approach to this topic would be is the ambiguous meaning of the concept ‘Fair Trade’. Since there are divergent interpretations of Fair Trade, ranging from labelling of products, over support to the social movement, to the reform of the trading system, and even trade defence instruments, there is no established answer to that question.

The aim of this chapter is twofold. First, on a conceptual level, a framework is developed to unravel the diverse meanings of ‘Fair Trade’ and to structure the debate. Second, from an empirical point of view, this framework is used to interpret the EU’s position and how it has evolved over time.

The chapter is structured as follows: first the complexity and ambiguity of the term ‘Fair Trade’ is briefly introduced, followed by an explanation and schematisation of its sometimes complementary, sometimes opposing ideological and philosophical meanings. Once the conceptual confusion associated with this concept is clarified, a historical overview of the EU’s positions and initiatives concerning Fair Trade is given, enabling a better understanding of where the EU Fair Trade policy is coming from and where it could be going. Finally, the framework developed in the first part will serve as a heuristic tool to map the EU’s position on the matter, followed by conclusions.

15.2 WHAT’S IN A NAME?

‘Fair Trade’ is a complex and multi-dimensional concept (Miller, 2017). There are several opinions on what fairness actually stands for and how it should be attained. In this regard, special attention should be given to the various spellings and the corresponding meanings of the term (see Box 15.1) as this distinction will also be used throughout the chapter.

In addition to ‘Fair Trade’, other terms such as alternative trade, ethical trade, social trade, trade justice and sustainable trade are used. Even though these terms often remain undefined and are used interchangeably, each of them could be given a specific meaning.

BOX 15.1 VARIOUS SPELLINGS OF FAIR TRADE

Fairtrade – one word – refers to products certified by Fairtrade Labelling Organisations International (World Fair Trade Organization et al., 2011). This product label is what most people will know as fair trade and has become the most popular and accessible model of fair trade to date.

The term **fair trade** – two words and lowercase – is used to refer broadly to the social movement, concept and market, while **FairTrade** – two words, capitalised – is the umbrella term for the philosophies and practices committed to fairness in global trade (Valiente-Riedl, 2013).

Respectively 'fairtrade', 'fair trade' and 'Fair Trade' **move from a very narrow to an extremely broad interpretation**, a distinction that will be addressed hereunder. These spelling rules are confirmed by other authors (for instance Fisher, 2009), however the notations are often mixed up, requiring a clarifying context.

For instance, sustainable trade also includes organic products, and social trade is focused on ensuring that working conditions in global value chains meet minimum international standards, mainly referring to the adoption of codes in the context of Corporate Social Responsibility (CSR) (Smith & Barrientos, 2005).

Whereas all variations of Fair Trade have in common that they refer to achieving greater equity in international trade, there is no consensus on how this should be organised, what it should look like, or which actors should be involved. In the conceptual framework set out below, we will map the different interpretations of the concept 'Fair Trade'. These range from the narrow and pragmatic approach of fairtrade labelling schemes and CSR practices to a broader interpretation of changing the international trading rules, which is often referred to as 'trade justice'. Moreover, we will indicate that, parallel to this narrow and broad interpretation of Fair Trade, different roles in scope and substance can be reserved for governments and/or market players.

These extremes are gathered in a matrix that we will use to structure the debate (see Figure 15.1). The framework consists of two axes. The first axis makes a distinction according to the extent of systemic change necessary to achieve fair trade, and ranges from a reformist to revolutionary view (partly based on Walton, 2010). The second axis distinguishes the required role of the government or public sector versus the market or private sector, in other words whether interventionism or neoliberalism prevails. Since these axes represent a continuum between the opposite extremes, there is no watertight seal separating them and gradations within each of the quadrants are possible.

15.2.1 Reformist Fairtrade

The reformist approach is pragmatic and narrow in the sense that the solutions put forward to gradually achieve greater equity in international trade do not challenge the functioning of the current, market-oriented trading system (in particular the rules of the World Trade Organization [WTO]).

Two distinct forms are included in the reformist approach. The first, 'fairtrade', is the most well-known interpretation of 'Fair Trade', as it constitutes a concrete practice that can easily be visualised through the product-certification route (e.g. Oxfam label) or through the

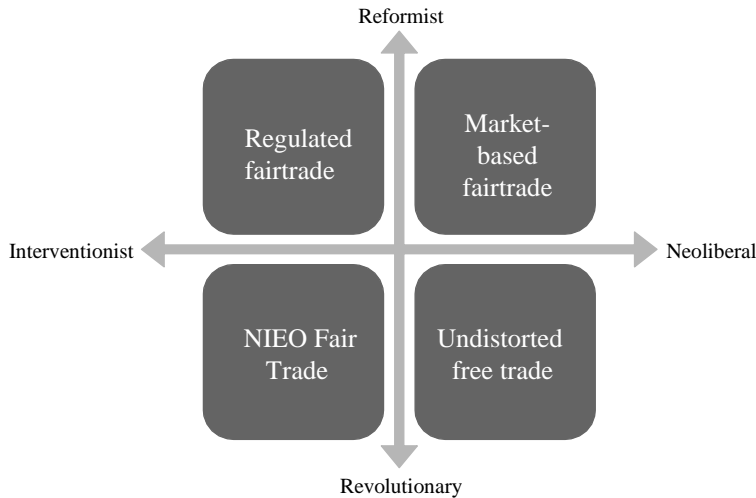


Figure 15.1 Conceptualisations of Fair Trade

integrated-supply route (e.g. world shops) (Cremona & Marín Durán, 2013). The most commonly used definition of this notion of fair trade has been put forward by the fair trade movement and reads as follows:

Fair Trade is a trading partnership, based on dialogue, transparency, and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, disadvantaged producers and workers – especially in the South. Fair Trade Organisations, backed by consumers, are actively engaged in supporting producers, awareness raising and in campaigning for changes in the rules and practice of conventional international trade. (World Fair Trade Organization et al., 2011)

The fair trade social movement has put much emphasis on the marketing of fairtrade and it has been relatively successful in doing so (Murray et al., 2006). However, the impact of this notion of fairtrade has often been questioned (Dragusanu et al., 2014), not least because it is doubtful to what extent fairtrade can have any impact if it continues to be a small (albeit growing) niche market. Also, the question whether fair trade should be mainstreamed or not has been strongly debated (Fridell, 2006; Jaffee, 2012; Murray et al., 2006; Raynolds, 2009). In addition, as the criteria underlying different labels can vary greatly, the lack of transparency between different labels has been criticised (Kolk, 2013; Raynolds et al., 2007).

When combining this narrow interpretation of fair trade with the second axis, namely interventionist (government dominated) versus neoliberal (market dominated) approaches, different ways to achieve the ‘fairtrade’ objective can be discerned. Governments can actively support fairtrade labelling schemes and sales volumes. For instance, they can engage in the development of state-led public labels, which for instance already exist at EU level for organic products. Here, governmental actors would be in charge of setting the criteria, issuing the certification and providing the necessary follow-up. Governmental actors could also be involved in ensuring the credibility of private fairtrade labels, which is currently under

pressure, by monitoring and following up on their implementation. In addition, public authorities can develop supportive public procurement rules enabling the consumption of fairtrade products. Constituting important players in procurement markets, governments could influence the market and set an example by putting ethical principles at the forefront of their purchasing practices. In addition, governments could decide to install beneficial market access, i.e. low or no import tariffs, for fairtrade labelled products.

The extent to which governments intervene in the creation and monitoring of labelling schemes, and link these to procurement rules and import tariffs, will move them further into the ‘regulated fairtrade’ quadrant of the matrix. Alternatively, moving away from more interventionist initiatives and allocating a bigger role to market actors, governments can limit themselves to the promotion of fairtrade products through awareness and information campaigns. Proceeding towards the neoliberal end of the spectrum, the business of labelling can be left entirely in the hands of private actors and remain voluntary. Governments then take a hands-off approach. Consumers’ demands and reputation determine which labels are credible enough and worth purchasing. The law of supply and demand decides to what extent some fairtrade labels may be more successful than others.

The promotion of CSR, which has become an increasingly important buzzword in international business over the past decade, represents the second form of the reformist approach. CSR refers to businesses taking responsibility for their impact on society, reconciling their economic, social and environmental ambitions. CSR policies are self-regulatory, defined at company level (mostly via a corporate code of conduct or third-party certification [including fairtrade]), whereby certain principles, rules and systems should ensure that the company’s actions are not only legal but also ethical (Hendrickx et al., 2016). Even though several definitions of CSR exist, Dahlsrud (2008) identified five consistently recurrent dimensions, namely the environmental, social, economic, stakeholder and voluntariness dimensions. Due diligence is a central concept for CSR, referring to the identification and management of risks and the steps that a reasonable and prudent company should take in order to avoid them and reduce its liability (Bright, 2016). In the context of responsible business conduct, due diligence refers similarly to the steps taken by a business to identify, prevent and mitigate any adverse effects of their activities on environmental, labour and human rights throughout their entire supply chains. By doing so, trade along the supply chain becomes fairer for those involved. Companies have been increasingly active in setting up CSR policies. However, research has shown that these have in general brought only limited improvements (Lund-Thomsen & Lindgreen, 2014). The main criticisms against CSR commitments concern their lack of enforceability as well as the limited transparency and little of efforts done by businesses to disclose the impact of their activities.

Even though CSR is originally a business-led practice, more interventionist options can also be envisaged. Governments could expand the existing legal obligations for businesses, especially the liability of the parent company in their home state for the impact of their own or their subsidiaries’ activities abroad. Other avenues by which governments could steer and shape CSR include setting rules for more transparency, multi-stakeholder initiatives to closely monitor certain sectors and companies, and interacting with private initiatives. The Kimberley Process Certification Scheme, initiated in 2003 by the United Nations to stop the trade in

conflict diamonds and to ensure that this trade was not fuelling violence by rebel movements, illustrates a potential approach (European Commission, 2014). Another example is the Bangladesh Sustainability Compact (see Box 15.3). Deviating less from the neoliberal part of the axis, governments can agree upon and manage to different degrees the implementation of non-binding principles that should be adhered to. The OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights are cases in point. Similar to fairtrade labelling, however, governments often limit themselves to promoting awareness of CSR principles, relying on the self-regulating force of 'ethical consumerism'.

Walton (2010) suggests that fair trade is best characterised as an attempt to establish a form of 'interim global market justice in a non-ideal world' (p. 441). 'Interim' refers to the fact that fair trade is a second-best proxy in the absence of the wider implementation of justice at the global level. This insight brings us to the revolutionary side of our conceptualisation, where, in contrast to the fair trade option outlined above, structural changes to the current trade system are envisaged.

15.2.1 Revolutionary Fair Trade

On the other side of the vertical axis, the revolutionary approach is ideological and broad. Here, we find two opposed interpretations of 'Fair Trade': the first one focuses on the fairness of the *outcome* of international trade practices, whereas the other interpretation looks mainly into their *procedural* fairness. We label both of them as revolutionary because the realisation of their core objective requires a structural change of the current trading system.

First, ever since the emergence of the fair trade movement in the 1960s, the pragmatic strategy mentioned above was supposed to be a component of a larger agenda to make the international trading system fairer. In this context, the fair trade movement can be seen as a countermovement of de-commodification and social re-embedding (Raynolds, 2000) and as resistance to the hegemonic global capitalist market (Shreck, 2005). In other words, the broader objective is to counter the trend of unequal growth in favour of the West and to oppose the prevailing practice of treating the world and its resources merely as products to be sold or bought. The origins of the fair trade movement coincide with the calls within the UNCTAD and G77 for a New International Economic Order (NIEO) that would radically restructure the world trading system and abolish the structural dependence of the South on the North (Rothstein, 1979). In this context commodity arrangements were launched providing high and stable prices for producers in the South and protective measures to insulate them from international competition and foster industrialisation. Ideologically, the pleas for a NIEO can be seen as the globalisation and radicalisation of the 'embedded liberalism' compromise between states and markets that characterised the post-war economic consensus in the North.

Here, fairness in trade depends on the consequences of a trading practice on the countries and their population. If these consequences are not fair, then the practice should be changed. Two issues are central in evaluating the outcome of trade. First, there is the issue of (global) distributive justice that handles the allocation of resources in societies (Boda, 2001; de Bres, 2016; Miller, 2017; Rawls, 1999; Rescher, 2002; Risse, 2012). This topic has caused much ink to flow, and the much-debated distinction between equality and equity is particularly relevant

when assessing the meaning of Fair Trade. Whereas equality refers to an equal distribution of wealth, equity puts this amount into perspective, adjusting the distribution to the needs of the actors (de Bres, 2016; Starmans et al., 2017). A second pertinent issue concerning the outcome of trade is its intergenerational dimension (Boda, 2001). Here, the fairness of trade is assessed through the impact of trade on sustainable development (De Schutter, 2015). Scholars and activists have argued that trade should not only be more regulated in terms of social and environmental standards, but also reduced in absolute terms since current trade practices inherently impede long-term sustainability.

Since public authorities at the national and international level are indispensable for the realisation of such systemic change, this interpretation is clearly located at the interventionist end of the horizontal axis. What this new trade system would look like is up for discussion, it would however allow countries, and especially developing and least developing countries (LDCs) to transform the rules in favour of their needs, enabling them to develop their economies according to their own preferences. It would drastically enlarge the ‘policy space’ of national (or regional) authorities in the South and in the North for the pursuit of sustainable development objectives (Heron, 2011; Shalden, 2005; UNCTAD, 2014).

Second, and radically diverging from the previous notion, Fair Trade can be seen as a synonym for undistorted free trade. Trade should be freed from barriers and discrimination. The role of governments is limited to guaranteeing the ‘level playing field’, for instance through competition policies. Accordingly, in trade policy circles, the term ‘fair trade’ has traditionally been used as a reference to certain trade protection instruments such as anti-dumping and anti-subsidy. One could wonder why this interpretation is not simply tagged as free and unfree trade.

According to the classical neoliberal view on international trade, the rules of the WTO are seen as the best guarantee for fair trade, whereas ‘unfair trade’ is typically characterised as violations of these rules. From this perspective, the development towards a completely liberalised trading system is thus necessary. Even though this approach is in line with current developments, the full realisation of this objective would still represent a radical change, for instance by prohibiting agricultural subsidies, import tariffs and other market interventions that are still allowed by the WTO. Importantly, free trade advocates are not necessarily opposed to (fairtrade) labelling, as long as this happens in a non-discriminatory and transparent way. When it comes to social clauses in international trade, free traders have always argued that voluntary and non-binding approaches such as labelling are more effective and less prone to protectionist abuses (Bhagwati, 2002).

In this view the rules and procedures aiming at the creation of a level playing field are paramount, in contrast to focusing on the outcome of the trade practice discussed above. Nozick’s Entitlement Theory (1974) allows us to interpret a norm of conduct (of traders in our case), claiming that we can tell whether a distribution of goods is just or not by looking at its history: if goods were acquired and transferred legitimately – in our case, in line with WTO rules – then the resulting distribution of goods is just. If they were not, then we have to ask whether the injustice was rectified (Green, 2009).

In this interpretation of undistorted free trade the role of governments is limited to creating an enabling space for the market to function freely. For this purpose further liberalisation between states is necessary, both in terms of tariffs and non-tariff barriers. In addition, the free

trade agenda needs to be deepened. This entails the inclusion of domestic regulatory matters that have a, direct or indirect, impact on trade in liberalisation negotiation. The more this free trade agenda can be realised, the more trade relations will be considered 'fair'.

15.3 AN EU FAIR TRADE POLICY?

After clarifying the different interpretations of the concept of Fair Trade, the question of the EU's position on the matter can now be addressed. Before structuring the EU Fair Trade policy according to the framework introduced above (see Figure 15.1), we provide a historical sketch of the EU's trade policy and relevant initiatives.

15.3.1 NIEO-inspired Trade Initiatives

Since the EU's creation, trade and aid relations with the EU member states' (former) colonies (later grouped as the African, Caribbean and Pacific [ACP] countries) have always received special attention. These relationships, formalised through the Yaoundé (1963, 1969) and Lomé conventions (1975, 1980, 1985, 1990) and the Cotonou Agreement (2000), have always been larded with an ethical development discourse (Langan, 2009). In the context of the scarcity of some commodities and the oil crises, as well as the growing assertiveness of newly independent developing countries, the EU (then still the European Community) developed a number of initiatives that somewhat approached the 'NIEO Fair Trade' quadrant. For instance, the EU was the first to create a Generalised System of Preferences (GSP) in 1971, thereby enhancing Asian and Latin American countries' access to the European market in a non-reciprocal way. In the same NIEO spirit, the first Lomé Convention established relatively ambitious trade-and-aid schemes aimed at intervention in international commodity markets such as Stabex, a compensatory finance scheme to stabilise export earnings of ACP countries, which was later extended to Sysmin for mining products and commodity protocols providing fixed quotas and prices for bananas, sugar and rum. Lomé also established non-reciprocal market access for the ACP countries. Despite significant limitations in design and obstacles in implementation, these initiatives at least partly echoed the NIEO demands for redressing the unequal distribution of benefits in favour of developing countries (Orbie, 2007).

15.3.2 Neoliberal Shift

These mechanisms were however gradually eroded through the 1980s and 1990s, demonstrating a shift towards more neoliberal EU trade policies. This culminated in the negotiation of the Cotonou Agreement, which abolished Stabex and Sysmin and introduced reciprocity in EU-ACP trade relations through Economic Partnership Agreements (EPAs). In line with a number of WTO verdicts and internal agricultural reforms, the banana and sugar protocols were effectively abolished. Even though trade was still being linked to development and other value-based objectives, regulated and market-based fairtrade clearly became the most-favoured approach.

First, this approach took shape through a number of highly symbolic trade-related initiatives that are located between the 'NIEO Fair Trade' and 'undistorted free trade' quadrants: the

first social GSP clause introduced in 1994, linking market access for developing countries to labour standards; ‘Everything but Arms’ (EBA) since 2001, providing duty-free and quota-free market access for the least-developed countries (LDCs); the elaboration of the GSP system with sustainable development and governance trade conditionality (GSP+) in 2005; and the EU Aid for Trade Strategy in 2007. While underpinning the EU’s image of an ethical actor towards the Global South, these initiatives also endorse a neoliberal logic to EU trade relations with developing countries (Orbie & Martens, 2016).

Second, the ‘market-based fairtrade’ interpretation has secured a place on the EU’s agenda. Especially the European Parliament paid attention to the calls of the fair trade movement and the first fairtrade label, Max Havelaar, which was launched in 1988. The Parliament issued several resolutions on the matter (in 1991, 1994, 1998, 2005), covering several pertinent Fair Trade themes, including structural imbalances, the WTO negotiations, policy coherence and coordination in the EU, and issues and suggestions concerning certification. The Commission then replied with rather descriptive Communications (in 1995, 1999, 2009) in which it elaborated on the concept of fair trade, adopting the fair trade movement’s definition mentioned above, and gave a brief outline of the situation at that time. The EU’s commitment to the aims and objectives of the WTO such as transparency and non-discrimination are always emphasised, indicating that fair trade initiatives should respect these prescribed principles. As will be confirmed below, this ‘hands-offs’ approach is still maintained today. In general, both the Parliament’s resolutions and the Commission’s Communications on fair trade have mostly addressed fair trade in the narrow and pragmatic sense (cf. market-based fairtrade).

Finally, in the same period, during the development of the European Constitutional Treaty, within the discussions of the Working Group on External Action in 2003, fair trade was also included among the EU objectives in the wider world. This would subsequently be taken over into the Lisbon Treaty (see Box 15.2). Manners (2010) pointed to the apparent contradiction in the pursuit of ‘free and fair trade’. He considers the reference an interesting innovation and leaves the question of whether it is a meaningful declaration of principle – or not – open. According to Eeckhout (2011) this reference should be read as an instruction to take account of the interests of developing countries in the international trading system and not as a sign of support for trade defence measures (cf. undistorted free trade), because the reference is juxtaposed with ‘the sustainable development of the earth’, ‘solidarity and mutual respect

BOX 15.2 ARTICLE 2.5 IN THE TREATY OF LISBON, AMENDING THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY (2008)

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, **free and fair trade**, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. [Emphasis added]

among peoples', and 'eradication of poverty and protection of human rights, in particular the rights of the child'. Interestingly, this novelty does not lean towards a more neoliberal trade order. However, as mentioned in the introduction, there is no univocal answer to the question of how the EU aims at realising this objective. However, rather than heralding a NIEO-style shift, we believe the reference indicates a growing preference for reformist approaches to fair trade.

These initiatives can be understood in the context of increased activism from transnational advocacy groups and the growing discontent of developing countries faced with intensified international trade liberalisation. Growing anti-globalisation protests, such as the 'Battle of Seattle' in 1999, have made it clear that the legitimacy of the world trading system depends on its ability to incorporate developing country demands and address issues of global trade justice (Stiglitz, 2006; Summers, 2001). Anti-EPA protests in the 2000s, and more recently anti-TTIP and anti-CETA activism (against the EU trade agreements negotiated respectively with the United States and Canada) throughout the EU, have only further illustrated the rising concerns with the fairness of the EU's trade policy.

However, around the mid-2000s, it seemed that the commitments to Fair Trade had barely been implemented. The Commission had engaged in a more radical free trade orientation through the EPAs, where the Commission increasingly emphasised the need for reciprocal market access and deep trade liberalisation. The EPAs have experienced a rough start and serious delays; however, more and more ACP countries have succumbed to the EU's pressure and are in the process of finalising negotiations. Dicaprio and Trommer (2010) note that by signing EPAs, developing countries, and especially LDCs, engage more than ever before in international trade law. One third of the LDCs involved in EPA negotiations were not even WTO members in 2009. Through the EPAs they have been included in the neoliberal global trade regime and are more prone to WTO legislation.

This trend towards neoliberal trade policies manifested itself even more clearly when the 'Global Europe – Competing in the World' trade strategy for the EU was launched in 2006 by the then Trade Commissioner De Gucht. The basic message of the Global Europe strategy is that trade relations, and new trade agreements accordingly, should foster (EU) competitiveness and should therefore be pursued with emerging markets. 'Fairness' is mentioned several times, but only in the context of trade defence (cf. undistorted free trade). The implementation of the Global Europe strategy has been quite successful in terms of bilateral free trade agreements (FTAs). No fewer than nine trade agreements have been concluded since the strategy's launch (South-Korea [2010], Central America [2012], Peru and Colombia [2012; with Ecuador joining in 2016], Canada, Ukraine, Georgia, Moldova and Singapore [2014] and Vietnam [2016]), whereas several negotiations are advancing fast at the time of writing (such as with Japan, Mercosur and the modernisation of the agreement with Mexico). Other negotiations are stalled but not cancelled (India, Indonesia, Malaysia, Thailand, Philippines and the United States). Finally, more trade negotiations are in the pipeline, such as with New Zealand and Australia.

15.3.3 Piecemeal Approach

In addition to the continuation of the (revised) initiatives linking trade and development launched in the 1990s and early 2000s, the EU has tried to combine its neoliberal trade

orientation with several ad hoc initiatives to curb certain negative consequences of trade. These can be grouped into four clusters: the chapters on ‘trade and sustainable development’ (TSD) in EU bilateral trade agreements; the recent ‘Trade for All’ strategy; several initiatives addressing issues concerning human rights or sustainable development in a specific supply chain; and a continuing promotion of fairtrade – in the narrow sense.

All the new generation trade agreements, starting with the EU-Korea FTA, contain a TSD chapter. Here, adherence to key international labour and environment standards and agreements, the prudent use of natural resources such as timber and fish, and the promotion of practices intended to favour sustainable development such as fair trade and CSR are included. These chapters also establish a monitoring mechanism which involved civil society of both parties. However, the TSD chapters have been criticised for being too weakly implemented and not enforceable. There is currently a reflection exercise ongoing within the Commission to address these criticisms and improve the functioning of these chapters (European Commission, 2017).

The ‘Trade for All’ strategy (European Commission, 2015), Global Europe’s successor, which was published when the EU’s trade policy was increasingly politicised mainly due to the negotiations of the Transatlantic Trade and Investment Partnership (TTIP), aspires to be a more responsible trade and investment policy. It therefore dedicates a chapter to a trade policy based on such values, in which it commits to a trade agenda promoting sustainable development, human rights and good governance. Several avenues are suggested to achieve this goal, including the improvement and implementation of existing trade instruments such as GSP+ and the TSD chapters mentioned above, fair and ethical trade schemes, and responsible management of supply chains. Even though the commitments described in this new strategy are very ambitious, it is currently too early to tell how successful and meaningful these will be.

Moreover, the EU has developed several initiatives to address the negative consequences of specific products and supply chains (see Box 15.3). These are based on a mix of policies (trade, development, internal market and environment) and approaches (trade conditionality, reporting obligations, multi-stakeholder dialogue) and aim at improving social, environmental and human rights causes. These initiatives touch upon sensitive and complex issues and most of them display implementation difficulties.

Finally, the EU’s, and that of the Commission in particular, ‘hands-off approach’ towards fairtrade labelling has remained on the agenda. The EU does not intend to play a role in the elaboration of fair trade criteria and their monitoring, since, according to the Commission, their interference would jeopardise the dynamism that private fair trade labelling initiatives have displayed (European Commission, 2009; Malmström, 2015). However the EU seems willing to create a supportive environment for the advancement of fairtrade. First, fairtrade has been given more attention to in the EU public procurement policy. Dynamics created by EU member states that proved to be more ambitious in including fair trade criteria in public tenders and a number of European Court of Justice rulings in favour of this approach (Cremona & Marín Durán, 2013) have led to clearer provisions on social criteria in the latest 2014 EU public procurement regulations. Second, the Trade for All strategy dedicated considerable attention to promoting fair and ethical trade schemes. As such, DG Trade has committed to the

BOX 15.3 SUPPLY-CHAIN-SPECIFIC EU INITIATIVES

Timber: The FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan adopted in 2003 comprises development cooperation, trade agreements between the EU and timber-producing countries, public procurement, private sector and civil society involvement and more, in order to combat illegal logging and strengthen forest governance. Concrete progress has been slow, as most interested timber-producing countries are still in the negotiation phase. So far only Indonesia, Cameroon, Central Africa, Ghana, Liberia and the Republic of Congo are implementing the trade agreements enabling the FLEGT Action Plan.

Garment industry: Following the Rana Plaza tragedy in 2013, the Bangladesh Sustainability Compact was launched, involving the EU, Bangladesh, the US, Canada and the ILO. Its aim is to improve respect for labour rights, factory safety and responsible business conduct in the sector. If successful, this distinct, multi-stakeholder approach might become exemplary in a context where increasing attention is given to the need for sustainable supply chains. However, so far tangible results are few and critical voices have highlighted the failure of Bangladesh to comply with the compact and the absence of changes on the ground. In April 2017, the European Parliament called for binding legislation and has urged the Commission to deliver on its objectives.

Conflict minerals: Regulation (EU) 2017/821 of the European Parliament and the Council of 17 May 2017 (OJ L 130, 19.5.2017, pp.1–20) aims at breaking the vicious cycle between trade in minerals (more specifically tin, tantalum, tungsten and gold) and the financing of conflicts. The resolution results from a balancing act between the positions of the European Commission and European Council (voluntary guidelines) and the Parliament (binding rules). It contains a mixed approach with binding requirements for upstream companies (mines, processors, traders, smelters and refiners) and recommendations for downstream companies (EU manufacturers).

In addition, measures are being taken to fight **wildlife trafficking** and trade in **tools for torture and executions**.

promotion of fairtrade through EU FTAs, the EU Aid for Trade strategy and EU delegations. Market data related to fairtrade are to be gathered and more awareness-raising activities will be developed. In this context an ‘EU cities for fair & ethical trade award’ is currently being developed.

In essence, the EU has radicalised its neoliberal free trade orientation while at the same time initiating several initiatives to offset the negative consequences of such free trade. Current Trade Commissioner Malmström recently summarized this approach during a speech (2017) by stating the following:

Our trade and investment policy helps a fair global system. For trade to be fair, all players need to play by the rules. By engaging with our partners, we try to set those common rules, and shape globalisation. It helps the poorest on the planet to develop, through the economic partnership agreements and asymmetric preferences we provide.

It helps to anchor our values. We have a new EU regulation on trade in conflict minerals, and in products used for torture and the death penalty.

And our trade agreements include significant, binding commitments to strengthen labour rights and environmental protection. . . .

For trade and investment policy to be open and fair, it must be conducted in a transparent and responsible manner. (p. 3)

This citation clearly contains references to both the revolutionary undistorted free trade position as well as the reformist regulated fair trade position. The latter is implemented through a piecemeal approach in which ad hoc initiatives are set up rather than a coherent and consistent policy.

15.4 CONCLUSION

In order to better understand the diverse meanings of Fair Trade, we developed a framework depicting how narrow reformist ‘fairtrade’ and broad revolutionary ‘Fair Trade’ views on the one hand, and limited or larger roles for governmental intervention on the other hand, result in four different interpretations: regulated fairtrade; market-based fairtrade; NIEO Fair Trade; and undistorted free trade (see Figure 15.1).

This framework has served as a heuristic tool to interpret the EU’s position concerning Fair Trade (see Figure 15.2). Whereas the EU briefly flirted with the NIEO Fair Trade option through beneficial market access, export stabilisation and commodity protocols in the 1970s, the general neoliberal shift in Western politics in the 1980s and 1990s was also translated into EU trade policy. Around the hinge of the new millennium, the EU started to profile itself as the leading force in favour of a more ‘harnessed globalisation’ and as a development-friendly international actor. However, the initiatives put forward fitted mostly in both reformist and revolutionary neoliberal trade policy, in which trade rules would not fundamentally challenge the status quo. Besides, the commitments made in EU policy documents and the discourse engaged in towards ‘fairtrade’ and ‘Fair Trade’ were not translated into concrete action. This

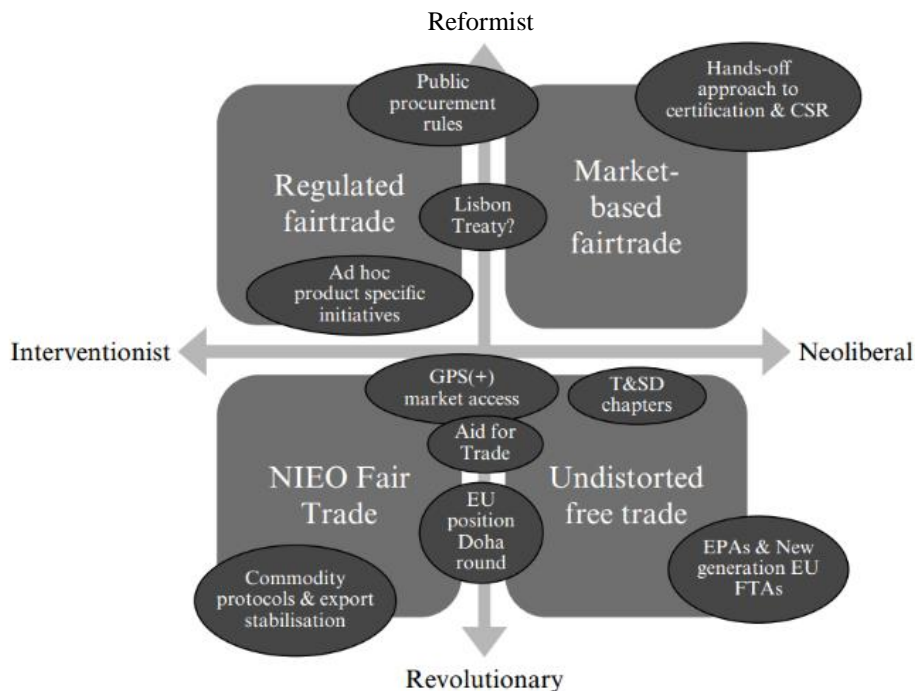


Figure 15.2 EU positions on Fair Trade

neoliberal tendency became radicalised from the mid-2000s until today, resulting in an ever-greater emphasis on trade liberalisation and reciprocity. Even though Fair Trade objectives, and especially those related to sustainable development, are still part of the EU's trade agenda, these follow a piecemeal approach and do not question or challenge but rather reinforce the prevalence of the neoliberal trade system.

At first glance the combination of 'undistorted free trade' with 'regulated' and 'market-based fairtrade' might seem paradoxical. However, this development can be interpreted in two different ways. First, the current hotchpotch of initiatives might be considered to be a steppingstone towards a more coherent and effective approach to achieving Fair Trade. Second, the combination of increased emphasis on sustainable development and the creation of different initiatives to achieve this objective through trade combined with a compelling neoliberal trade policy might represent two sides of the same coin. In this case the sustainable development discourse and ad hoc initiatives are just palliative measures which help to legitimise the neoliberal trade policy.

Time will tell whether references to 'fair trade' in the Lisbon Treaty and the 'Trade for All' strategy will eventually contribute to a radical change in the current neoliberal trade system, and otherwise whether the current reformist fair trade policy approaches will be considered fair by the population in Europe and its trading partners.

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Article 2: Do labour rights matter for export?
A Qualitative Comparative Analysis of
pineapple trade to the EU

by Annelien Gansemans, Deborah Martens, Marijke D'Haese, Jan Orbie

Article

Do Labour Rights Matter for Export? A Qualitative Comparative Analysis of Pineapple Trade to the EU

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Abstract

Labour norms are increasingly considered in trade relations, but is the protection of labour standards a necessary condition for export to the EU? A Qualitative Comparative Analysis, based on countries that export pineapples to the EU, shows that labour standards protection matters in combination with distance, zero tariffs and institutional quality in a number of cases. However, for none of the cases was it a sufficient condition on its own for determining exports to the European market. Rather, we show that (1) having a zero tariff is necessary for a relatively large share of export to the EU, and (2) labour standards protection can make a difference when the institutional quality is weak in some African cases, in contrast to Latin American exporters.

Keywords

agricultural trade; globalisation; institutions; labour rights; political economy; QCA

Issue

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1. Introduction

Fruits and vegetables consumed in Europe are sourced from all over the world. The EU is the world’s biggest importer of agricultural products, ahead of the US and China (European Commission, 2015a). Increasing global trade and competitive pressure have changed the nature of food production systems in the South, with significant implications for rural populations (Hurst, 2005). Many private voluntary governance mechanisms now regulate the social and environmental conditions in production, with private labels increasingly addressing production process characteristics, including working conditions (O’Rourke, 2003). At the same time, interest groups in Europe put pressure on firms to limit their use of imports from countries with poor labour practices through

naming and shaming campaigns targeted at companies which fail to comply with social standards in their supply chain (Fair Trade Advocacy Office [FTAO], 2015a). Policy-wise, labour norms are increasingly considered in trade agreements, the aim being to make trade conditional upon compliance with international conventions (Van den Putte & Orbie, 2015).

Despite the growing interest in labour issues among firms, consumers and policy makers, the importance of social conditions, such as the protection of labour rights, as a determinant for trade remains understudied (International Labour Organisation [ILO], 2016; Kucera & Sarna, 2006). Most publications follow a logic of cost efficiency to explain trade performance, revealing a race to the bottom in labour standards (Hefeker & Wunner, 2002). A question yet to be clarified, however, is whether

exporting countries that comply with labour standards are rewarded with a relatively larger export share to the European market, especially in trade of agricultural products. We address this gap in the literature by questioning how levels of labour rights protection, in addition to institutional quality, tariff regimes and exporting countries' distance to the EU, affect the share of unilateral exports to the EU. We argue that countries with better levels of labour rights protection, high institutional quality, preferential tariffs and closer distance export a relatively larger share to the EU. Along the same lines, a producer country far away from the EU, without good institutional quality and/or with low protection of labour rights, is expected to export a less important share of produce to the EU.

A Qualitative Comparative Analysis (QCA) approach was used to determine the necessary and sufficient conditions for a high dependency on the EU market for a country's pineapple exports. This approach differs from the analysis of trade flows in gravity models (Kucera & Sarna, 2006), because it allows causal complexity to be addressed by testing several paths or combinations that lead to the same outcome (see *infra*). We focus on fresh pineapples, an important agricultural export product in terms of traded volumes around the world and export value. This case selection is rooted in the labour-intensive nature of production and highly visible labour challenges.

As will be explained in the next section, consumers in the EU market are said to be particularly sensitive to ethical and labour issues, and this is manifested at different levels, such as trade agendas, private labelling and consumer behaviour. In this article we search for evidence that labour protection levels do indeed matter for a country to trade intensively with the EU. The remainder of the article is structured as follows. In the next section, the importance of labour standards in trade is explained and a theoretical justification is provided for the conditions considered in this study. Section Three justifies the QCA methodology and describes the data sources. Section Four discusses the results before concluding the article.

2. Theoretical Justification for the Included Conditions

2.1. Labour Rights as a Determinant of Exports

Trade between countries may be conditional on prior levels of respect for labour rights in partner countries (Mosley & Uno, 2007). According to conventional wisdom, businesses are likely to prefer low labour cost producing countries over labour quality because of competitive pressure and profit concerns. This would induce a race to the bottom in labour conditions (Kucera, 2001). However, recent literature has demonstrated how labour rights can affect trade positively. Proponents of a positive labour rights-trade hypothesis assume that

countries, or firms, purposely select partners that perform well in terms of labour standards because of reputational concerns or external ethically driven pressures (Greenhill, Mosley, & Prakash, 2009). Moreover, developed countries could serve as role models for developing countries through market integration, which can result in the harmonisation of institutions and regulatory arrangements (Kucera & Sarna, 2006; Neumayer & de Soysa, 2006). At firm level, Toffel, Short and Ouellet (2015) found better labour rights compliance among suppliers serving buyers located in countries where consumers are wealthy and socially conscious. In addition, Distelhorst and Locke (2017) concluded that importers favour doing business with companies that comply with basic labour and environmental standards.

The debate has intensified over the last few years, not least because of the devastating consequences of the collapse of the Rana Plaza building in Bangladesh (Reinecke & Donaghey, 2015). There are indications that both European consumers and public bodies across the EU have increasingly valued labour rights protection in their consumer decisions and public policies (Mosley, 2017).

The consumer is increasingly being considered as an important actor and driver of labour governance, both through purchasing power and voice power (Donaghey, Reinecke, Niforou, & Lawson, 2014; Kolben, 2017, in this issue). Stolle and Micheletti (2013, pp. 96–98) point to the European Social Survey (2003), and the Citizenship, Involvement, and Democracy Survey in the US (2006), which demonstrated that about 31% of all people interviewed reported engaging in “political” consumption behaviour. Purposely buying labelled products (buycotting) and rejecting other products (boycotting) reflects the individual responsibility taken by consumers to foster sustainable development. In the US, 28% of the respondents reported engaging in such political consumption behaviour, while in European countries the level is higher, exemplified by 60% of the respondents in Sweden. A recent survey on behalf of DG DEVCO revealed that 50% of the respondents (out of 27,672 in the 28 EU member states) would be prepared to pay more for groceries (such as fair trade products) from developing countries to support people living in those countries (Eurobarometer, 2016). The retail sales of fair trade products, the world's leading ethical label, also point to a relatively high demand for labelled products in the European market. Global fair trade sales were estimated at EUR 7.3 billion in 2015. The EU is the most important region for fair trade products, accounting for almost 80% of the world retail sales, with the UK (30%) and Germany (13%) being the leading buyers of fairly produced products, while the US accounts for 12% of sales (Fair Trade International, 2016).

The EU has elaborated a trade and investment policy based on values in its latest trade strategy, “Trade

¹ The Fair Trade Advocacy Office proposed actions to the EU to require “transparency in supply chains and a system of due diligence...that requires persons placing products on the EU market to ensure compliance with labour, environmental rights of the country of origin. This could be applied to agricultural products and also to textiles” (FTAO, 2015b, p. 9).

for All". The Communication refers to the expectations of EU consumers¹ concerning respect for human rights, labour rights and the environment during the production of the goods they use (European Commission, 2015a, p. 20). However, since most production occurs along value chains that criss-cross developed and developing economies alike, the Commission acknowledges the challenging reality of meeting these expectations. These elements are reiterated in the 2017 review of the EU trade strategy (European Commission, 2017, pp. 2, 9–10). First, high standards of labour protection are confirmed as being fundamentals of the "Trade for All" strategy. Second, the ambition to continue to make trade "a positive force around the globe" and to shape globalisation to promote sustainable development with a trade policy based on "EU and universal values" has been affirmed. Third, consumer concerns are taken into account as "the EU continues to pursue new avenues in making trade policy more responsive to citizen's concerns". The European Parliament (2017) has confirmed these demands from EU consumers in its resolution on the impact of international trade and the EU's trade policies on global value chains, recalling that "no consumer wants to continue buying products made by children or exploited men and women".

A number of EU trade instruments incorporate the necessity to respect labour rights. In its Generalised Scheme of Preferences plus (GSP+, see *infra*), the EU grants beneficial market access to developing countries that ratify and implement, amongst others, the ILO core conventions (Velluti, 2015). In addition, all the new generation EU trade agreements, starting with the EU–Korea agreement in 2011, include a chapter on "Trade and Sustainable Development", in which the Parties pledge to adhere to the ILO core conventions, amongst others (see Van den Putte & Orbie, 2015). Finally, ad hoc instruments have been developed to address labour rights violations in specific value chains. For example, the Global Sustainability Compact aims to improve labour conditions in the garment industry in Bangladesh (Vogt, 2017, in this issue). In addition to these trade instruments, the role of and collaboration with private actors in labour governance have also received more policy attention and Corporate Social Responsibility initiatives² are increasingly supported, directly and indirectly, by the EU (Knudsen & Moon, in press).

Following this line of argument on the importance of labour standards in EU trade, the article engages with the positive trade-labour assumption by examining whether exports to the EU are conditional upon the level of protected labour rights in the exporting country. By confirming this assumption, we can broadly conclude that, in line with claims made by policy makers, Europe is actually a more social market. This also implies that exporting producers and governments have an interest in improving social conditions at firm and national level in order to

boost their exports to the EU. If the results reject the assumption, we can conclude that the perception of the European market as being very demanding with regard to social standards is not in line with reality, resulting in an overestimation of European consumer and retailer power to raise the bar on social standards.

2.2. Institutional Quality as a Determinant of Exports

An enabling institutional environment attracts foreign investment and facilitates trade through more secure property rights, contract enforcement and investor protection (Levchenko, 2007; Rodrik, 1996). Anderson and Marcouiller (2002) showed that better institutional quality leads to larger trade volumes. A similar positive influence of domestic institutions on bilateral trade flows was found by Jansen and Nordås (2004). Absence of good governance, especially a weak regulatory framework, can be an obstacle to trade (Méon & Sekkat, 2008). For example, the decline in pineapple export share to the EU from Côte d'Ivoire since the mid-1980s was partly explained by political instability, high turnover of private and public institutions, withdrawal of state support for the agricultural sector, and the civil war (Vagneron, Faure, & Loeillet, 2009). Institutions, as business facilitators, may also indirectly affect trade through the relationship with investment (Pajunen, 2008). European importers particularly value a positive institutional environment in-country, because a good judicial system makes it easier to do business and facilitates contract enforcement (Richards, Gelleny, & Sacko, 2001).

2.3. Tariffs as a Determinant of Exports

Preferential or zero tariff rates in trade agreements can foster exports through facilitated access to the European market. Higher tariff rates for a specific product or country can work as a barrier, increasing export costs. However, the impact of tariffs differs by country and product (Emlinger, Jacquet, & Chevassus Lozza, 2008).

The EU has developed a number of trade regimes to manage access to its market. The EU provides preferential market access through bilateral agreements and has elaborated specific trade regimes for developing countries. The latter are mainly unilateral trade arrangements including "Everything but Arms", initiatives providing duty-free and quota-free access for the least developed countries, the GSP, which allows vulnerable developing countries to pay fewer or no duties on exports to the EU, and the GSP+, which combines more generous market access with sustainable development, governance and trade conditionality. While the former colonies, mainly referred to as the African, Caribbean and Pacific (ACP) group, long stood at the top of the EU's "pyramid of preferences", their position has been eroded. This has been a gradual evolution in which reciprocal (yet still asym-

² For example, several member states are actively involved in promoting sustainable supply chains by financially supporting and participating in multi-stakeholder initiatives such as the Dutch Sustainable Trade Initiative (Initiatief voor Duurzame Handel, IDH) and the UK Ethical Trading Initiative (ETI).

metrical) free trade has trumped the development aspiration of the EU trade agenda (for an overview see Orbie & Martens, 2016).

In general, the classical policy instruments, such as tariffs, have lost much of their importance due to liberalisation processes and new trade agreements (Hefeker & Wunner, 2002). Indeed, in 2014, about 71% of all agricultural imports entered the EU at zero duty, representing a value of EUR 72 billion (European Commission, 2015b). This demonstrates that factors other than tariffs are expected to influence trade with the EU (Emlinger et al., 2008).

2.4. Distance as a Determinant of Exports

Countries that are located close to the EU are expected to export more to the EU because of lower transportation costs (De Groot, Linders, Rietveld, & Subramanian, 2004). Moreover, some of these countries may also benefit from historical relations and development assistance to strengthen their capacity in productive sectors through infrastructure and human capital investment (Babarinde & Faber, 2007). These historical ties may facilitate more direct, stable export relations between producer firms in the former colonies and buyers in the former European colonisers (Emlinger et al., 2008).

3. Methodology

3.1. Case Selection

The fresh pineapple sector was selected due to its large direct export flow with few processing steps in the value chain, the labour-intensive production process, and the increased consumption in Europe. Pineapples are produced in various countries, mainly on large plantations dominated by three multinationals: Del Monte, Dole and Chiquita (Centre for the Promotion of Imports from Developing Countries, 2015). The focal area for pineapple production is Costa Rica, which is the largest fresh pineapple exporter to the EU, accounting for 85% of European supplies in 2013 (COMEXT, 2015). In fact, ACP producers have lost a large market share while imports from Costa Rica have multiplied over the past decade (Vagneron et al., 2009), as Costa Rica started to cultivate the MD-2 variety which is in high demand on the market.

The dataset used in this study consists of 44 pineapple producing and exporting countries (i.e. actors or units of analysis). The fresh pineapple export volumes to the European market were derived from the United Nations COMTRADE (2015) and Eurostat COMEXT (2015) databases (HS code 080430). Countries with less than 500 metric tonnes of total export volume were excluded from the analysis because of their negligible economic value, resulting in 26 valid cases—too few for an econometric analysis and too many for an in-depth qualitative analysis. Hence, a QCA modelling approach was chosen.

3.2. Data Sources

3.2.1. The Outcome: EXP

The outcome is defined as the share of pineapple exports to the EU compared to other destinations. It represents the relative importance or dependency on the EU market as a destination for pineapples in each exporting country considered in the model, which is quantified by the volume of exported pineapples to the EU from a specific country divided by the total pineapple exports in that country for the year 2012. Our model does not consider bilateral trade between individual countries as could be done in gravity models; instead, it analyses unilateral flows from the trade partner country to the European Union member states, which comprise one group for this purpose, the EU market. Some countries, notably in Africa, export exclusively or a large share of their pineapple to the EU. In contrast, Latin American countries export only half of their total pineapple exports or less to the EU as for them the US is an important market. Asian countries mainly trade processed canned pineapple, which we excluded from our analysis.

3.2.2. The Conditions: LAB, INST, TAR, DIST

LAB. There is no commonly approved index to measure and capture the different labour rights dimensions (Anker, Chernyshev, Egger, Mehran, & Ritter, 2003; Compa, 2003; Cuyvers & Van Den Bulcke, 2007; Teitelbaum, 2010). Measures at firm level include wage, working time and occupational health and safety, which are referred to as outcome rights (Barrientos & Smith, 2007). At country level, the four core ILO conventions are generally mentioned, namely freedom of association and the right to collective bargaining (referred to in the remainder of this article as Freedom of Association and Collective Bargaining [FACB] rights), no forced labour, no child labour, and no discrimination at the workplace. Out of these four dimensions we consider the collective bargaining rights as the lever to improved labour conditions in the agricultural sector where wages are low and workers tend to be worse off compared to those employed in other occupational sectors (Mosley, 2008). These 'enabling' FACB rights are conducive to access to outcome rights such as wage and working time (Barrientos & Smith, 2007), yet the right to form an independent workers' organisation is still suppressed in many countries, especially in agricultural sectors where unionisation is low (Hurst, 2005). Neumayer and de Soysa (2006) argued that globalisation is more likely to promote FACB rights than the outcome rights.

The QCA model presented in this article uses the most recent labour rights (LR) indicator (Kucera & Sari, 2016). The LR indicator distinguishes between two elements of workers' rights: the legal ratification of the ILO conventions (*de jure*) and their practical implementation (*de facto*). The LR indicator consists of 108 distinct eval-

uation criteria for *de jure* and *de facto* violations which are grouped in five categories: (1) fundamental civil liberties, (2) right of workers to establish and join organisations, (3) other union activities, (4) right to collective bargaining, and (5) right to strike. Factual information is obtained from the coding of nine textual sources³. The final indicator scores countries from 0 to 10 (respectively the best and the worst possible score).

INST. The World Bank Governance Indicators are widely used to measure institutional quality (Kaufmann, Kraay, & Mastruzzi, 2010). The indicators are based on the opinion of a large number of enterprise, citizen and expert survey respondents, including 32 individual data sources. It consists of six dimensions measured on a scale of –2.5 to 2.5 (with 2.5 as the best score): voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, and control of corruption. The dimension rule of law was selected in this study because it captures the perceptions of confidence in abiding by the rules, in particular the quality of contract enforcement, property rights, police and courts, which is relevant in trade relations (Kaufmann et al., 2010).

TAR. We compared the trade regime and the product-specific tariff line for pineapple applied to each country in 2012, derived from the TARIC database (European Commission, 2016). Bolivia, Costa Rica, Ecuador, Guatemala, Honduras and Paraguay fell under the GSP+ scheme. Benin, Thailand, Togo and Uganda had an EBA agreement. Other countries had a GSP agreement except for the USA for which normal tariffs apply. The GSP trade regime did not guarantee zero tariffs for pineapple in the case of China, Brazil, India, Malaysia, Philippines and Thailand. Therefore we opted to account for the variation in tariff lines for pineapple. A dummy variable was constructed for having a zero tariff rate.

DIST. This article uses the distance measures developed by the Centre d'Etudes Prospectives et d'Informations Internationales (CEPII) to determine the distance between Brussels as Europe's institutional centre and each capital city in the world (Mayer & Zignago, 2011).

3.3. Qualitative Comparative Analysis

QCA differs in several respects from traditional statistical methods and is increasingly being applied in comparative political research at country level (Giumelli & Van Roozendaal, 2016; Pajunen, 2008).

First, the objective of the study is not to estimate if a variable or an interaction term has a positive or negative significant effect on a dependent variable as in the gravity model of Kucera and Sarna (2006), who found a limited positive effect of FACB on total export trade. Instead, we seek to identify the different combinations of

conditions that lead to the outcome, the relative importance of the EU as export market, because it is theoretically more likely that various paths for specific cases bring about this outcome.

Second, QCA and regression analysis have different explanatory approaches, each of which lends itself to different research questions and hypotheses (Vis, 2012). QCA follows a causes-of-effects approach, because the goal is to explain the different causal patterns in the cases under study that produce specific outcomes (effects), such as dependency on the EU market for pineapple exports in this study. Quantitative approaches adopt an effects-of-causes approach, with the central objective to estimate the average effect of one (or more) variables in a sufficiently large sample. Hence, a QCA is well-suited to address the question of why some countries are exporting relatively more to the EU and others not, because the outcome is probably shaped by combinations of factors and not by one causal model with individual factors in isolation.

Moreover, QCA is especially appropriate for small to medium n-samples where regressions are problematic (Marx, Rihoux, & Ragin, 2014). We do not focus on worldwide bilateral trade flows (exports and imports between all countries in the world) as in gravity models. Instead we want to compare cases of countries having a high or low dependency on exports to the EU, in particular for pineapple as a labour-intensive agricultural product.

The essence of QCA is to understand the combination of conditions that is necessary and/or sufficient for a certain outcome. The QCA method focuses on relations of implication (absence or presence of conditions), while in regression models the causation is assumed to be linear, testing hypotheses about relations of covariation or correlation between the independent and dependent variables (Katz, Vom Hau, & Mahoney, 2005; Thiem, Baumgartner, & Bol, 2016).

A first advantage is that QCA allows for equifinality, or in other words, different causal paths can explain the same effect. This notion of equifinality is omitted in most mainstream statistical methods, which serve to assess the average effect of one individual factor (Grofman & Schneider, 2009). It is true that regression analysis can also account for a combination of conditions through interaction terms, but the interpretation is less straightforward than in QCA and the number of interaction terms that can be included is limited (Vis, 2012). QCA cannot simply be substituted by an interaction-based regression model, because it is hard to deal with many high order interaction terms without violating statistical assumptions (Marx et al., 2014). Even with interactions, regression models are insensitive to the differences between necessity and sufficiency (Grofman & Schneider, 2009, p. 669; Vis, 2012, p. 173).

³ *Country Reports on Human Rights Practices* (US Department of State), *Annual Survey of Violations of Trade Union Rights* (International Trade Union Confederation—ITUC), *ILO's Reports of the Committee on Freedom of Association*, *Reports of the Committee of Experts on the Application of Conventions and Recommendations*, *Reports of the Conference Committee on the Application of Standards*, *Country Baselines Under the ILO Declaration Annual Review*, *Representations under Article 24 of the ILO Constitution*, *Complaints under Article 26 of the ILO Constitution*, and the relevant national legislation for non-ratifying countries.

A second advantage is that QCA explains why specific groups of cases fit with a combination of factors. Moreover, a coefficient might appear not statistically significant in regression results or an extreme value might be seen as an outlier, while it can still be informative and crucial as a condition explaining the occurrence of a few cases in a QCA solution (Grofman & Schneider, 2009; Katz et al., 2005). QCA thus has the advantage that it has less severe data requirements than regressions (Vis, 2012).

The following steps were adopted in the QCA approach. The number of cases complies with the minimal number of cases needed for a QCA. This is calculated as 2^k with k the number of conditions. As we consider four conditions (see above), we need a minimum of 16 cases to have a reliable solution. The 26 countries thus represent an intermediate N-situation, for which QCA is particularly adequate.

QCA is a set-theoretic approach to test causal complexity based on the notion of sets, set membership scores and set relations to find the necessary and sufficient conditions. A condition is considered necessary if whenever the outcome is observed, the condition was present. A condition is sufficient if whenever the condition was present, the outcome also occurred.

In a QCA model, the outcome and conditions are formulated in terms of set membership, with a value assigned to each individual case, indicating the extent to which it belongs to the set. This data needs to be calibrated using empirical information on the cases in order to assign set membership scores that vary between 0 and 1. Membership scores are calculated using both crisp set (0 = out or 1 = in the set) as fuzzy set approaches. Fuzzy set models allow for partial membership in the set. When calibrating the fuzzy set data, a threshold or point of indifference (0.5) needs to be defined; this allows a qualitative distinction to be made in the case of membership. Fuzzy sets also require the selection of anchor points between full set membership (1) and full non-membership (0). From the three commonly used calibration methods (theory-guided qualitative, direct and indirect), we apply the qualitative approach that identifies meaningful anchors based on conceptual and case knowledge.

Through such a qualitative calibration method, the fuzzy set anchor points determined the threshold values for each of the four levels within a set: 0 (no membership), 0.33 (partial non-membership, more out than in the set), 0.67 (partial membership, more in than out), and 1 (full membership) (Table 1). For the outcome vari-

able, the cases with an export share of less than 0.05 were recalibrated as “no dependency” on the EU market for pineapple export (0), values between 0.05 and 0.3 were assigned to the “low dependency” subset (0.33), values between 0.3 and 0.7 belonged to the “intermediate dependency” subset (0.67) and values above 0.7 covered the “highly dependent” cases (1). The point of indifference for the fuzzy set “many labour rights violations” is considered in the middle of the scale as 0.5, meaning that cases passing this threshold are more in the set (1) than out (0). For the crisp set enabling institution, the cases with a value below -0.50 on the original scale of -2.5 to 2.5 were recalibrated to zero (no enabling institutions) and above -0.5 to 1 (enabling institutions). The dummy of tariff rates is already binary and did not have to be recalibrated. The distance to the EU over 10,000 km was calibrated as “very far” (1), between 6,000 and 10,000 km as “far” (0.67), between 4,000 and 6,000 km as “intermediate” (0.33), and less than 4,000 km as “close” (0).

Table A1 of the annex compares the calibrated data used in the analysis with raw data values. The fit of a QCA is measured by its consistency and coverage. “Consistency” measures the degree to which a relation of sufficiency between a causal condition (or combination of conditions) and an outcome is met within a given data set (Ragin, 2006). Consistency values range from 0 (no consistency) to 1 (perfect consistency). Once it has been established that a condition or combination of conditions is consistent with sufficiency, coverage provides a measure of empirical relevance, or the extent to which this combination of conditions is covered by empirical cases. There are three measures for coverage of different parts of the solution in the case of equifinality (i.e. more than one different solution path lead to the same outcome) (Ragin, 2006). The solution coverage refers to how much is covered by the solution term. The raw coverage (cov.r) indicates which share of the outcome is explained by each alternative path. The unique coverage (cov.u) refers to the share of the outcome that is exclusively explained by a specific alternative path.

The QCA package of the software programme R was used to analyse the necessary and sufficient conditions.

4. Results

This section presents the results of the QCA model that examines which (combined) factors are necessary and

Table 1. Calibration of anchor points for the conditions and outcome.

Set name	Type	Anchor points (range of calibrated values)
High importance EU (EXP)	Fuzzy	(0) < 0.05 (0.33) < 0.3 (0.67) < 0.7 (1)
Many labour rights violations (LAB)	Fuzzy	0.5
Enabling institutions (INST)	Crisp	(0) < -0.50 < (1)
Zero tariff (TAR)	Crisp	1 (zero tariff), 0 (no zero tariff)
Far from the EU (DIST)	Fuzzy	(0) < 4,000 (0.33) < 6,000 (0.67) < 10,000 (1)

sufficient conditions for a high importance of the EU market for pineapple exports. The first step in a QCA after calibration is to check for necessary conditions. This is done separately from the analysis of sufficient conditions, which is the second step.

4.1. Analysis of Necessary Conditions

The necessity solution is determined by a threshold of consistency equal to 0.9 and the coverage should not be lower than 0.5 (Ragin, 2006).

Table 2 shows one necessary condition for the occurrence of the outcome, namely zero tariffs, with a consistency score of 0.937 and a coverage value of 0.527, slightly above the corresponding threshold levels. Whenever the outcome (relatively large share of pineapples exported to the EU) occurs, the condition zero tariff is present. This suggests that having a zero tariff is necessary for a high relative importance of the EU market for pineapple exports.

The analysis was repeated for the non-occurrence (~) of the outcome and conditions, which is a qualitatively different event than its occurrence. None of the necessary conditions scored above the threshold level of 0.9.

4.2. Analysis of Sufficient Conditions

The truth table (Table 3) summarises all possible combinations of the four conditions, here 16 rows, for the outcome that the EU is an important export market. Each row identifies the possible combinations of conditions and the cases that belong to that combination. Some of the rows in the truth table are empty because there were no empirical cases for these combinations of conditions.

Next, the truth table is minimised towards a conservative solution. For this purpose, an inclusion threshold score for sufficiency of 0.75 or higher is considered (Schneider & Wagemann, 2012), which means that 75% of the cases' membership scores in a combination of conditions must be consistent. Cases with a consistency

Table 2. Analysis of necessity for the (non-)occurrence of the outcome with consistency, coverage and relevance of necessity values.

Conditions	Consistency		Coverage		RoN	
	EXP	~EXP	EXP	~EXP	EXP	~EXP
LAB	0.480	0.583	0.441	0.769	0.689	0.842
~LAB	0.748	0.576	0.556	0.614	0.646	0.677
INST	0.469	0.522	0.385	0.615	0.619	0.722
~INST	0.531	0.478	0.436	0.564	0.639	0.696
TAR	0.937	0.587	0.527	0.473	0.438	0.412
~TAR	0.063	0.413	0.096	0.904	0.750	0.966
DIST	0.621	0.850	0.354	0.695	0.375	0.559
~DIST	0.850	0.209	0.695	0.442	0.559	0.823

Notes: TAR: zero tariff; LAB: many labour violations; DIST: far from EU; INST: enabling institutions; EXP: high importance EU.

Table 3. Truth table for the importance of EU for pineapple exports with conditions TAR, LAB, DIST and INST.

TAR	LAB	DIST	INST	EXP	n	incl	Cases
1	1	1	1	1	2	0.857	Panama, Colombia
1	0	0	0	1	3	0.856	Benin, Côte d'Ivoire, Togo
1	1	0	0	0	1	0.749	Cameroon
1	0	0	1	0	1	0.732	Ghana
1	0	1	1	0	4	0.709	Costa Rica, Mauritius, South Africa, Uganda
1	1	1	0	0	1	0.449	Guatemala
1	0	1	0	0	7	0.440	Bolivia, Dom. Rep., Ecuador, Honduras, Mexico, Paraguay, Tanzania
0	0	1	1	0	1	0.187	Brazil
0	1	1	1	0	4	0.173	China, India, Malaysia, Thailand
0	0	0	1	0	1	0.080	USA
0	1	1	0	0	1	0.000	Philippines
0	0	0	0	?	0	—	
0	0	1	0	?	0	—	
0	1	0	0	?	0	—	
0	1	0	1	?	0	—	
1	1	0	1	?	0	—	

Notes: TAR: zero tariff; LAB: many labour violations; DIST: far from EU; INST: enabling institutions; EXP: high importance EU; n: number of cases; incl: inclusion of sufficiency score.

value higher than 0.75 were assigned a 1 in the outcome for the minimisation process.

Table 4 suggests that the outcome is reached through two solution paths, which is given in QCA notation⁴ as: $TAR \sim INST \sim DIST \sim LAB + TAR \sim INST \sim DIST \sim LAB \Rightarrow EXP$.

The first solution path suggests that the combination of a zero tariff, being closely located to the EU, weak institutions and few labour rights violations are sufficient for a high relative importance of the EU as an export market for pineapples. This combination of conditions is found in Benin, Côte d'Ivoire and Togo. The second solution path suggests that the combination of a zero tariff, enabling institutions, distance far from the EU, and many labour rights violations also suffice for having a high relative importance of the EU market in the case of Colombia and Panama. Whenever one of these two combinations of conditions is present, the EU market for pineapple exports is relatively important. Moreover, the outcome is not attributable to a unique factor or individual condition. Results suggest that the quality of institutions is less relevant in the West African exporters of pineapples compared to the Latin American exporters such as Colombia and Panama. The reverse is true for the protection of labour rights, which matters more for the West African exporters than for Colombia and Panama.

Regarding the model fit, the solution has a consistency value of 0.857, a score that indicates that some cases deviate from the conditional patterns. The solution coverage is 51% of the cases, meaning that half of the cases are not explained by the solution, which limits the generalisability of the results. The raw and unique coverage values are rather low for both paths. The first path is covered by more cases and is of more empirical importance than the second path.

In sum, the model confirms that a combination of conditions (protection of labour rights, institutional quality, tariff regime and distance) explain the relative share of pineapple exports to the EU market. Surprisingly, the solutions did not cover as many cases of pineapple exporting countries as we had expected. This result is probably influenced by the outcome definition, because West African producers heavily rely on the EU market for pineapple exports, receiving a score 1 on the outcome variable. These countries have few alternative market channels except for local consumption. The market

outlets for Costa Rican pineapples are ample. Half of the Costa Rican pineapples go to the US market. Defined in the way it is, the outcome variable underestimates the importance of the EU for Costa Rican pineapples, which are market leaders in terms of volume exported to the EU.

5. Conclusion

The protection of labour standards is increasingly relevant for trade relations because of consumers' ethical concerns and corresponding attention paid by firms and policy makers. The European market is an important destination for agricultural export commodities and European firms might favour countries with good labour standards to establish their global value chains in addition to decisions based on cost logic. However, our understanding of the extent to which labour standards play a decisive role in exporting to the EU is limited. The advantage of QCA is that it allows the combination of conditions that lead to the outcome to be determined. In our study, the results distinguished between two distinct paths, contrasting African to Latin American cases. On the one hand, the combinations of few labour violations and weak institutions are sufficient in the case of Benin, Côte d'Ivoire and Togo. On the other hand, the combinations of many labour violations and enabling institutions are sufficient in the case of Panama and Colombia.

Our QCA analysis, based on countries that export pineapples to the EU, shows that protection of labour standards matters in a number of cases. However, it does not always play a role, and it is never a sufficient condition on its own for determining exports to the European market. Rather, we have shown that (1) having a zero tariff is necessary for a large share of export to the EU, and (2) labour standards protection can make a difference when the institutional quality is weak.

The first finding highlights the relevance of preferential market access. Having zero tariff market access constitutes a necessary (but not sufficient) condition for a relatively large export share to the EU. Interestingly, distance to the European market in itself does not appear as a sufficient condition as it needs to be complemented with other factors such as labour standards protection and institutions. The second finding does indeed sug-

Table 4. Conservative solution of sufficient conditions.

Solution paths	Inclusion Sufficiency Score	Raw Coverage	Unique Coverage	Cases
1) $TAR \sim INST \sim DIST \sim LAB$	0.856	0.302	0.302	Benin, Côte d'Ivoire, Togo
2) $TAR \sim INST \sim DIST \sim LAB$	0.857	0.208	0.208	Colombia, Panama
Total Solution	0.857	0.510		

Notes: TAR: zero tariff; LAB: many labour violations; DIST: far from EU; INST: enabling institutions.

² In Boolean algebra + means (non-exclusive) OR, * stands for AND, while ~ refers to the non-occurrence of a term.

gest that labour standards protection can matter but only in combination with the quality of institutions. Specifically, countries where labour standards are respected have been relatively successful exporters to the EU market even if the institutional context is weak (e.g. in Benin, Côte d'Ivoire, Togo), whereas countries where labour standards are violated will only have a large share of exports when their limited compliance with labour rights is compensated for with a high institutional quality (e.g. Panama, Colombia). Countries that do not manage to compensate for their weak track record of labour rights with a higher institutional quality (e.g. Honduras and Guatemala) will not benefit from a larger relative export share to the EU.

Further research needs to engage in a more profound analysis of the interaction between the importance of institutional quality for determining export performance, which has been well established in research on international trade, and compliance with labour rights conventions. The finding that weak institutional quality in the African cases did not hinder business probably reflects the political and economic relations which, historically, have facilitated trade with the ACP countries. In addition, the firm and retailer levels should be examined more closely to determine how important compliance with labour standards is in purchasing decisions and how labour standards are monitored in global value chains. Why and how exporters that respect labour standards have managed to export successfully to the EU market despite weak institutions (in African cases) remains to be investigated more closely. Finally, it is unclear to what extent the findings can be generalised beyond the peculiarities of pineapple to other agricultural commodities and value chains such as garments.

We can conclude that even (Latin American) violators of labour standards have a relatively large export share to the EU, provided that they benefit from zero tariffs and have good institutions. This calls into question whether the image of the EU market as being very demanding in terms of labour standards coincides with the purchasing behaviour of importers, retailers and consumers, who might not sufficiently reward or incentivise compliance with labour standards at sourcing sites. Although the EU is explicit in its discourse on promoting labour standards, it appears to miss its intended leverage effect on actual export decisions and consequently fails to drive higher standards in sourcing sites.

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Conflict of Interests

The authors declare no conflict of interests.

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Annex
Table A1. Raw and calibrated data of the outcome and conditions.

	Case	EXP		INST		LAB		TAR		DIST	
		Cal.	Raw	Raw	Cal.	Raw	Cal.	Raw	Cal.	Raw	Cal.
1	Cameroon	1	0.98	-1.04	0	5.61	0.56	0	1	5272	0.255
2	Côte d'Ivoire	1	0.98	-1.12	0	2.40	0.24	0	1	5126	0.216
3	Benin	1	0.93	-0.64	0	2.38	0.24	0	1	4948	0.180
4	Mauritius	1	0.92	0.95	1	3.67	0.37	0	1	9453	0.927
5	Togo	1	0.86	-0.94	0	1.31	0.13	0	1	4979	0.182
6	Ghana	1	0.82	-0.04	1	2.02	0.2	0	1	5058	0.200
7	Panama	0.67	0.67	-0.23	1	6.67	0.67	0	1	8814	0.888
8	Dominican Republic	0.67	0.62	-0.7	0	3.81	0.38	0	1	7325	0.726
9	Thailand	0.67	0.52	-0.17	1	6.09	0.61	2.3	0	9261	0.917
10	Costa Rica	0.67	0.48	0.47	1	2.9	0.29	0	1	9046	0.904
11	Ecuador	0.67	0.40	-1.16	0	4.17	0.42	0	1	9535	0.931
12	Colombia	0.67	0.38	-0.39	1	5.27	0.53	0	1	8874	0.892
13	South Africa	0.33	0.28	-0.11	1	1.68	0.17	0	1	9536	0.931
14	Honduras	0.33	0.10	-1.17	0	4.50	0.45	0	1	8916	0.895
15	Tanzania	0	0.02	-0.56	0	4.22	0.42	0	1	7242	0.714
16	Bolivia	0	0	-1.04	0	3.28	0.33	0	1	10261	0.958
17	Brazil	0	0	-0.11	1	4.07	0.41	2.3	0	9666	0.937
18	China	0	0	-0.49	1	10	1	2.3	0	7971	0.810
19	Guatemala	0	0	-1.1	0	7.08	0.71	0	1	9095	0.907
20	India	0	0	-0.1	1	6.83	0.68	2.3	0	6420	0.577
21	Malaysia	0	0	0.51	1	6.65	0.67	2.3	0	10261	0.958
22	Mexico	0	0	-0.56	0	4.15	0.42	0	1	9259	0.917
23	Paraguay	0	0	-0.87	0	3.45	0.35	0	1	10417	0.963
24	Philippines	0	0	-0.55	0	5.81	0.58	2.3	0	10516	0.965
25	Uganda	0	0	-0.36	1	3.70	0.37	0	1	6219	0.540
26	USA	0	0	1.6	1	4.57	0.46	5.8	0	5892	0.460

Notes: EXP: high importance EU; INST: enabling institutions; LAB: many labour violations; TAR: zero tariff; DIST: far from EU.

**Article 3: Mapping variation of civil society involvement
in EU trade agreements: a CSI Index**

by Deborah Martens, Lore Van den Putte, Myriam Oehri, Jan Orbie

Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index[★]

Deborah MARTENS^{★★}, Lore VAN DEN PUTTE^{★★}, Myriam OEHRI^{★★} & Jan ORBIE^{★★}

Civil society has apparently been granted an important role in the monitoring of the sustainable development chapters in the new generation European Union (EU) trade agreements. While a debate about the role and functioning of these civil society mechanisms is emerging, we lack a profound comparative analysis of the treaty provisions establishing them. In order to address this gap and to map the extent to which civil society is included in the agreements, a Civil Society Involvement (CSI) Index is developed inductively and applied to the ten relevant EU trade agreements. It concludes that although some form of template is used, large variation exists. A distinction is made between three categories of CSI score: high (Canada, Korea), medium (Georgia, Moldova, Vietnam, Ukraine), and low (Central America, Singapore, Peru-Colombia, Ecuador). The outcome also reveals interesting nuances within these categories and calls for further research on the rationale for and consequences of this variation.

1 INTRODUCTION

Civil society organizations have, apparently, been granted an important role in the discussion and monitoring of the sustainable development chapters¹ in the new generation of European Union (EU) trade agreements.² Although civil society was

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¹ While the formal name of these chapters is the 'chapter on trade and sustainable development', we refer to them as the 'sustainable development chapter' to ensure reader-friendliness.

² Our definition of 'civil society' follows the practice of the EU, referring to a wide range of non-state actors including most importantly labour, environmental and business groups, but also organizations working on human rights, animal rights, and consumer interests, for instance. P. Bouwen, *Business Interest Representation and Legitimate European Governance*, in *Civil Society and Legitimate European*

mentioned in previous trade agreements,³ it is only since the EU-Korea agreement that civil society mechanisms have become a standard and quite prominent feature of EU trade agreements. While the US and Canada include civil society to some extent in their agreements,⁴ the EU has opted for a more specific and elaborate approach towards civil society involvement (CSI). These mechanisms arguably reflect the distinctive, cooperative approach of the EU, which emphasizes dialogue and collaboration over sanction-based enforcement.⁵ The approach also reflects the EU's ambition to involve civil society more in its internal⁶ and external⁷ policy-making and implementation.

A debate about the role and functioning of the civil society mechanisms created in the context of EU trade agreements is emerging.⁸ While the number of such mechanisms has grown exponentially in recent years, alongside the increasing number of EU trade agreements entering into force, there are no systematic and comparative analyses of these mechanisms as yet. The limited number of evaluations of the functioning of the meetings that have taken place so far are mainly policy-oriented and their assessments diverge from a negative 'talking shop' to a positive 'empowerment opportunity'.⁹ Indeed, we lack a profound analysis of the treaty provisions on these civil society mechanisms, hampering a sound evaluation.

Governance (S. Smismans ed., Edward Elgar 2006); European Commission, *The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations* (2012).

³ The EU trade agreements with Mexico (1997), South Africa (2000), and Chile (2002) mention a vague possibility or desirability to consult civil society organizations.

⁴ US and Canadian trade agreements foresee the possibility for any person with an interest, in practice often civil society organizations, to file a complaint if one of the Parties to the trade agreement is not respecting its labour commitments. Both the US and Canada also established a permanent advisory system to involve civil society in the implementation of the trade agreement. ILO, *Assessment of Labour Provisions in Trade and Investment Arrangements* (ILO 2016).

⁵ M. Oehri, *Comparing US and EU Labour Governance 'Near and Far': Hierarchy vs Network?*, 22 J. Eur. Pub. Pol'y (2015); E. Postnikov & I. Bastiaens, *Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements*, 21 J. Eur. Pub. Pol'y (2014); ILO, *supra* n. 4.

⁶ European Commission, *European Governance: A White Paper* (2001); K. Armstrong, *Rediscovering Civil Society: The European Union and the White Paper on Governance*, 8 Eur. L.J. (2002).

⁷ European Commission, *supra* n. 2.

⁸ J. Orbie, D. Martens & L. Van den Putte, *Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation* (Centre for the Law of EU External Relations 2016).

⁹ EESC, *Civil Society in Action – Monitoring Sustainable Development and Wider FTA Implementation: Lessons to Be Drawn From the EU Experience*, in *Summary Report: EESC Session at Public Forum WTO 2012* (C. Miglioli ed., 2012); EESC, *Briefing Note to the Attention of Mr. Dumitru Fornea for Trade Policy Committee Dinner Organized by the Dutch EU Presidency, Discussion about the Trade and Sustainable Development Chapters in EU Trade Agreements, including Civil Society Monitoring Mechanisms* (2016); EESC, *EESC Evaluation of Civil Society Advisory Mechanisms in EU Free Trade Agreements* (2016); D. Martens, et al., *Civil Society Meetings in EU Trade Agreements: Recommendations and Lessons for EPAs* (ECDPM 2016); Y. Altintzis, *Civil Society Engagement and Linkages in EU Trade Policy*, in *Linking Trade and Non-Commercial Interests: The EU as a Global Role Model?* (T. Takacs & A. Dimopoulos eds, Centre for the Law of EU External Relations 2013).

As Postnikov and Bastiaens but also Lechner highlight, knowledge on the design of the social provisions in trade agreements is key to understanding the implementation and ultimate success of these provisions.¹⁰ In fact, during the civil society meetings observed by the authors, the legal texts were used as a source to discuss the mandate and set-up of the mechanisms and were referred to on several occasions.¹¹ We therefore expect the provisions on CSI to affect the practical functioning and effectiveness of the mechanisms so a systematic and comparative analysis seems indispensable. Only then will we be able to assess whether civil society has been granted an important role in discussing and monitoring the sustainable development chapters of recent EU trade agreements.

This comparative mapping is all the more relevant since there is uncertainty about the extent to which civil society provisions actually differ across agreements. On the one hand, there seems to be a common template with several key features (see *infra*). In this context, the sustainable development chapter in the EU-Korea agreement is often considered to be a ‘blueprint’ or ‘gold standard’ for the subsequent agreements.^{12,13} From an institutionalist theoretical perspective and according to existing research on EU external democracy promotion, EU negotiators follow specific templates that are based on domestic institutional prerequisites.¹⁴ If it is true that the civil society meetings are ‘toothless’ and merely a ‘talking shop’, one can also expect that these ‘declaratory’ provisions do not require thorough negotiations and therefore the same provisions would reappear in every subsequent agreement. On the other hand, existing studies on EU external

¹⁰ L. Lechner, *The Domestic Battle over the Design of Non-Trade Issues in Preferential Trade Agreements*, 23 Rev. Int'l Pol. Econ. (2016); Postnikov & Bastiaens, *supra* n. 5.

¹¹ The authors attended the following civil society meetings: the transnational public meeting of the EU-Peru-Colombia agreement (Dec. 2016), the transnational meeting of the EU-Central America agreement (June 2016 and May 2015), the EU domestic mechanism of the EU-Peru-Colombia agreement (Apr. 2016), a transnational meeting of the EU-CARIFORUM agreement (Apr. 2016), the EU domestic mechanism of the EU-Central America Association Agreement (Mar. 2016) and a meeting of the EU Delegation in Colombia with local civil society (Dec. 2015).

¹² This is the main reason why we do not examine the EU-CARIFORUM agreement (2007). This agreement constitutes an Economic Partnership Agreement implementing the trade provisions of the Cotonou Agreement (2000). Therefore this agreement does not fall within the ‘new generation’ of EU trade agreements. Specifically, it does not have a separate chapter on sustainable development and it does not establish domestic civil society meetings (only a transnational meeting), which makes it difficult to compare with the 10 agreements since Korea.

¹³ Personal interview, DG Trade, (Aug. 2016); F. Bossuyt, *The Social Dimension of the New Generation of EU FTAs with Asia and Latin America: Ambitious Continuation for the Sake of Policy Coherence*, 14 Eur. Foreign Aff. Rev. Special Issue, 703–722 (2009); F. Hoffmeister, *The Deep and Comprehensive Free Trade Agreements of the European Union – Concept and Challenges*, in *Trade Liberalisation and Standardisation – New Directions in the ‘Low Politics’ of EU Foreign Policy* (M. Cremona & T. Takács eds, Centre for the Law of EU External Relations 2013).

¹⁴ See F. Bicchì, ‘Our Size Fits All’: *Normative Power Europe and the Mediterranean*, 13 J. Eur. Pub. Pol’y (2006); T. Börzel & T. Risse, *One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law*, Workshop on Democracy Promotion (2004).

relations found that there may be variations within the same template.¹⁵ Also when it comes to CSI in the sustainable development chapter, Bartels alluded to differences across EU agreements.¹⁶

Accordingly, a new comparative study is timely for at least three reasons. First, since Bartels' study many more agreements containing civil society provisions have been concluded and consequently one can expect even more variation. Second, interviews and existing studies found that the sustainable development chapters of at least some agreements involved tough negotiations between the EU and third countries, thereby disqualifying the suggestion that they would be irrelevant and unvarying.¹⁷ Third, growing contestation, especially since the negotiations with the US and Canada, has been questioning the legitimacy of the EU trade agreements. Ambitious CSI provisions can be a way to address current criticisms.¹⁸

We therefore take up the challenge of creating a more nuanced and accurate picture of the design of CSI. In essence, we will provide a comprehensive overview of the variation in civil society provisions that exists between the different agreements. Our main objective is to thoroughly map the extent to which civil society is included in the sustainable development chapter of EU trade agreements. For this purpose we develop a CSI Index based on five clusters and twenty-one criteria and apply this to the ten 'new generation' trade agreements¹⁹ signed by the EU. In doing so, we provide an innovative analytical tool that contributes to existing databases mapping the design of trade agreements, such as the Design of Trade Agreements (DESTA) database, which does not consider CSI as a separate

¹⁵ A. Wetzel & J. Orbie, *The Substance of EU Democracy Promotion: Concepts and Cases* (Palgrave 2015).

¹⁶ L. Bartels, *Human Rights and Sustainable Development Obligations in EU Free Trade Agreements*, 40 *Legal Issues Econ. Integration* (2013).

¹⁷ Personal interview, *supra* n. 13; personal interview, Secretary of Economic Development Honduras (June 2016); personal interview, EESC (Nov. 2016); ICAES & Konrad Adenauer Stiftung, *Guía didáctica de formación: Las Rondas de Negociación sobre un Acuerdo de Asociación U.E. – C.A.* (2013).

¹⁸ More critically, increasing EU trade agreement's legitimacy through CSI can also be interpreted as co-optation of civil society. See J. Orbie, D. Martens, M. Oehri & L. Van den Putte, *Promoting Sustainable Development or Legitimising Free Trade? Civil Society Mechanisms in EU Trade Agreements*, Third World Thematics (2017).

¹⁹ EU-Korea Free Trade Agreement (negotiations concluded in 2009), EU-Peru-Colombia Trade Agreement (2010), EU-Central America Association Agreement (2010), EU-Ukraine Association Agreement (2011), EU-Moldova Association Agreement (2013), EU-Georgia Association Agreement (2013), EU-Peru-Colombia-Ecuador Trade Agreement (2014)*, EU-Canada Comprehensive Economic and Trade Agreement (2014), EU-Singapore Free Trade Agreement (2014), EU-Vietnam Free Trade Agreement (2016). For the sake of simplicity we will refer to these preferential trade agreements uniformly as 'trade agreements'.

*In this analysis the accession of Ecuador to the EU trade agreement with Colombia and Peru is treated separately because the provisions establishing the civil society mechanisms could – in theory – have been renegotiated. Art. 329 on accession by other Andean countries states that the EU 'shall aim at preserving the integrity of this Agreement', suggesting that 'flexibility' should be limited to concessions on market and investment related issues in the annexes, 'and any aspect for which such flexibility were necessary for the accession'. The question what is 'necessary' is of course a political one.

category in its codebook, and the TRade & ENvironment Database (TREND), which maps environmental provisions in trade agreements, including public involvement in the implementation of the agreements.²⁰

Methodologically, this article applies an inductive approach, starting from the empirical observations in the different EU agreements. Throughout this process, a codebook was developed, resulting in an overall CSI Index, allowing us to comparatively assess the agreements. From this, several provisional conclusions and findings concerning the involvement of civil society in the monitoring of EU trade agreements will emerge that can be used for further, theory-testing research.

The article is structured as follows. After this introduction, the CSI Index will be developed in the section 2. A section 3 will then apply this CSI Index systematically to map the civil society provisions in the new EU trade agreements. This will reveal a surprising amount of variation between the agreements which will then be analysed. The conclusions will outline the main findings and suggest avenues for further research.

2 DOWN TO THE LAST DETAIL: THE CSI INDEX

Overall, three recurrent features characterize all the CSI in the sustainable development chapter of EU trade agreements. First, they refer to a domestic group (mostly called ‘domestic advisory group’) in which representatives of three constituencies (labour, environment, and business) of each signatory Party (both within the EU and within its trading partner(s)) participate. Second, they establish a transnational mechanism where the members of the domestic mechanism and/or other civil society organizations of both the EU and its trading partner(s) meet annually. Third, they foresee some interaction between these two mechanisms and the inter-governmental body (between the EU and its trading partner(s), the so-called Parties) that meets annually in relation to the implementation of the sustainable development chapter. However as will be illustrated throughout the article, within this common template, there is significant diversity between different EU trade agreements. The CSI Index spelled out below was developed in order to identify and map all these differences. For this purpose, we elaborated several clusters and criteria of CSI, resulting in an overall CSI Index that provides a general indication of the extent to which civil society is involved in a particular EU trade agreement.

The codebook and the scores for the different criteria were developed in an inductive way. The criteria and their scores were informed by the authors’ earlier

²⁰ See at: <http://www.designoftradeagreements.org/>, and <http://www.chaire-epi.ulaval.ca/trend> (accessed Nov. 2016).

research based on document analysis, interviews, field research, and participant observation.²¹ The development of the codebook and the attribution of the scores were fine-tuned through a ‘double blind’ approach that proceeded in five phases in order to increase the intercoder reliability. First, two researchers independent from each other constructed a codebook deriving general clusters and specific criteria from the CSI provisions in all recent EU trade agreements. Second, both researchers shared their codebook with each other in order to agree on the clusters, specific criteria, and operationalization of the different codes. In the third phase the researchers applied the aggregated codebook to the provisions of the agreements. Fourth, the results were once again compared and final decisions on the codes and operationalization were made. Finally, the criteria and results were shared with policymakers working on the topic who largely subscribed to this coding as well as to its results.

This exercise resulted in twenty-one criteria which are categorized into five clusters (see Annex for the codebook). These clusters concern (1) the participants’ independence from the Parties, (2) the scope of membership, (3) the operation of the transnational meetings, (4) the interaction among civil society and interaction with the government(s), and (5) the involvement in the dispute settlement mechanism. By engaging in this coding exercise described above, the criteria are able to cover all relevant variation existing in the agreements since the EU-Korea agreement.²² Each of the criteria is scored according to the authors’ assessments of their CSI.²³ The subsequent paragraphs set out the five clusters and their (sub) criteria in general terms. A more detailed overview can be found in the codebook in the Annex.

2.1 INDEPENDENCE OF PARTICIPANTS

The first cluster concerns the independence of participants from the Parties taking part in the civil society mechanisms. First, there is variation regarding the explicit *terms* used to indicate the concept of ‘civil society’. In the EU-Singapore (Article 13.15.4) and EU-Vietnam agreement (Article 15.4) the term ‘stakeholders’ is employed, while the term ‘civil society’ is used for all other agreements. This is relevant because even though this word choice stems from cultural preferences, it may have significant implications for the kind of organizations that participate in

²¹ List of observed meetings, *supra* n. 11.

²² The codebook might need to be updated if current negotiations, such as the EU-Japan agreement or the Transatlantic Trade and Investment Partnership (TTIP) with the United States, lead to novelties.

²³ The scores provided in Table 1 merely reflect variation in the involvement of civil society and are not intended to be interpreted as if a score of 18 (EU-Ukraine) would mean that CSI is twice as much as a score of 9 (EU-Peru-Colombia).

the mechanisms and the links they have with the state.²⁴ Second, *independence* of civil society determines whether the autonomy of participating civil society is explicitly mentioned. This is the case in all agreements except for the EU-Peru-Colombia and EU-Ecuador agreements. Third, *selection* reflects the way civil society representatives will be designated. Specifically, there is variation in whether the composition and consultation of the domestic mechanisms should be in accordance with domestic law. Such a provision gives a considerable amount of leeway to the governments to organize the mechanism according to their own preferences, as is the case for the EU-Vietnam (Article 15.4) and EU-Peru-Colombia agreements (Article 281). In this cluster, CSI will be rated higher when the meetings are more independent from the Parties.

2.2 SCOPE OF MEMBERSHIP

The second cluster concerns the scope of membership which is characterized by great diversity. Four criteria were discerned. A first criterion refers to the *specificity of membership of the domestic mechanism*. While some agreements such as the EU-Korea, EU-Peru-Colombia, and EU-Ukraine agreements only vaguely mention the groups that can participate, others are much more specific. For instance, the EU-Canada agreement mentions that the domestic labour mechanism involves ‘employers, unions, labour and business organizations, as well as other relevant stakeholders as appropriate’ (Article 23.8.4). The CSI is higher when the membership of a group is more concretely described, as it reflects a more specific commitment to include certain groups. A second criterion, *novelty*, concerns the need to establish a new domestic mechanism. In most cases the use of existing mechanisms is allowed. The EU-Central America agreement enables the employment of existing mechanisms but points out that the Parties ‘shall offer existing bodies the opportunity to reinforce and develop their activities with the new perspectives and areas of work provided by this Title’ (Article 294.4 footnote 45). Only the EU-Korea agreement obliges the governments to set up a new mechanism to deal with sustainable development (Article 13.12.4). CSI will be higher in this case because there is a separate mechanism that is specifically mandated to deal with the sustainable development dimension of the trade agreement. When existing mechanisms can be used, there is less certainty that these will discuss or monitor the trade agreement, let alone the sustainable development chapter. A third

²⁴ Personal interview, *supra* n. 13; H. Volkhart, *Studying Civil Society Across the World: Exploring the Thorny Issues of Conceptualization and Measurement*, 1 J. Civil Soc’y (2005); C. Spurk, *Understanding Civil Society*, in *Civil Society and Peacebuilding: A Critical Assessment* (T. Paffenholz ed., Lynne Rienner Publishers 2010).

criterion indicates the *specificity of membership of the transnational mechanism*. In the EU-Vietnam agreement, for example, it is mentioned that members of the domestic mechanisms meet in the transnational meeting (Article 15.5), while the EU agreement with Peru-Colombia and Ecuador only foresee a session with civil society organizations and the public at large (Article 281.1). CSI is scored higher when the participants in the transnational mechanisms include the members of the domestic mechanisms together with other additional groups than when the public at large can meet without any continuity in membership whatsoever. A final criterion concerns the *potential presence of state actors*. The possibility for ‘local public authorities’ to take part in the civil society mechanisms is only explicitly mentioned in the case of the EU-Central America agreement (Article 294.5). As their presence could potentially limit the possibility to speak out freely and may strengthen the governmental interference in the ‘selection’ (see criteria *supra*), CSI is rated higher when their presence is not explicitly permitted.

2.3 OPERATION OF TRANSNATIONAL MECHANISM

A third cluster concerns the operation of transnational meetings and consists of three criteria. The first criterion refers to the *deadline* for the Parties to agree on the operation of the transnational mechanism. While in most agreements it is specified that the Parties should determine the operation within one year after the entry into force of the agreement, this is not explicitly stated in the cases of the EU-Central America, EU-Singapore, and EU-Canada agreements. As we expect such a deadline to ensure that the transnational mechanism is on the agenda of the Parties and their intergovernmental body and will therefore take place in time, we provide a higher CSI score for it. The second criterion relates to the *reoccurrence* of the transnational meetings. In the EU-Singapore agreement the transnational meetings are to take place within the first two years after the entry into force of the agreement and thereafter ‘as necessary’ (Article 13.15.3), whereas all other agreements mention that this mechanism shall meet once a year. We expect CSI to be higher when they are to meet frequently. A third criterion concerns the *dependence of the transnational meeting on the intergovernmental body to be convened or organized* (sometimes in conjunction with the Parties’ own meetings). For example in the case of the EU-Central America agreement ‘the Parties agree to organize and facilitate a bi-regional Civil Society Dialogue Forum for open dialogue’ (Article 295.1). Only in the case of the EU-Korea and EU-Ukraine agreements does the organization of the transnational meeting not depend formally on the Parties. We give CSI a higher score in these cases, as it provides more possibilities for the transnational mechanism to determine its own meeting frequency.

While the first three clusters refer to the establishment and functioning of the civil society mechanisms, the last two clusters concern the relationship of these mechanisms with other bodies or processes created in the context of the sustainable development chapters. The latter clusters mirror the interaction between the civil society mechanisms, their relationship to the governments, and their involvement in the dispute settlement procedure.

2.4 INTERACTION

A fourth cluster concerns interaction, both among civil society mechanisms and between them and the Parties. The first criterion reflects the *interaction among civil society mechanisms*. In the cases of the EU-Korea, EU-Ukraine, and EU-Canada agreements, the possibility for direct interaction between the transnational and the domestic mechanism is created. In our codebook, CSI is rated higher when it is explicitly mentioned that both mechanisms can communicate as it creates a formal communication channel between them.

A second criterion covers the *interaction between civil society and the Parties*. Four subcriteria are identified to describe the variation in the interaction. The first subcriterion concerns interaction between the *domestic mechanism and the Parties*. The EU-Moldova agreement, for example, mentions that the domestic mechanisms may submit views or recommendations to the Parties, including on their own initiative (Article 376.4). The second subcriterion refers to interaction between the *domestic mechanism and its own government*. This is the case in the EU-Peru-Colombia (Article 281), EU-Ecuador (Article 281), EU-Singapore (Article 13.15.5), EU-Canada (Article 23.8.4), and EU-Vietnam (Article 15.4) agreements where the domestic mechanisms may, ‘on their own initiative’, submit views or recommendations to their respective Parties on the implementation of the sustainable development chapter. The third subcriterion highlights interaction between the *transnational mechanism and the Parties*. This interaction is, for example, explicitly included in the case of the EU-Georgia agreement, where ‘the Parties shall present an update on the implementation of this Chapter to the joint civil society dialogue forum’ (Article 241.3) and the views and the opinions of the joint civil society dialogue forum ‘shall be submitted to the Parties’ (*ibid.*). The fourth subcriterion reflects the interaction between the *transnational mechanism and the Parties by means of the domestic mechanism*. This possibility is only foreseen in the cases of the EU-Korea, EU-Ukraine, and EU-Canada agreements.

The above-mentioned interaction between civil society and the government (s) can take place at different levels, ranging from one-way communication (e.g. the EU-Moldova agreement where the domestic mechanisms ‘may submit views or recommendations on the implementation of this Chapter, including on its

(their) own initiative' (Article 376.4)) to two-way communication in which civil society and governments are obliged to react to each other's communications. This is the case for the EU-Canada agreement (see *infra*). This gradation was also taken into account while scoring the different provisions.

2.5 DISPUTE SETTLEMENT MECHANISM

A fifth and final cluster reflects the involvement of civil society in the *settlement of disputes between the Parties*.²⁵ CSI in these mechanisms creates more opportunities for civil society organizations to provide input and enforce the commitments made in the sustainable development chapter. We can identify six criteria. A first criterion concerns whether *communications of the domestic mechanism can form the basis of government consultations*. This is only the case for the EU-Korea agreement (Article 13.14.1). CSI is rated higher when this possibility is explicitly mentioned. A second criterion concerns the *involvement of the domestic mechanism in government consultations*. In the EU-Georgia (Article 242.5) and EU-Moldova (Article 378.5) agreements, it is mentioned that 'where appropriate, that Sub-Committee may seek the advice of the DAG(s) [domestic mechanism(s)] of either or both Party(ies) or other expert assistance'. CSI is rated higher when a domestic mechanism can take the initiative to provide input to the consultations. A third criterion concerns the *advisory role of the domestic mechanism to the Panel of Experts during its proceedings*. This role is again explicit in the EU-Korea agreement (Article 13.15.1) as well as in the EU-Ukraine agreement (Article 301.1). CSI is rated higher when the Panel of Experts is expected to seek its advice than when this possibility is not foreseen. A fourth criterion concerns whether the *Panel of Experts informs the domestic mechanism about the outcome of its proceedings*. This is the case both in the EU-Korea (Article 13.15.2) and EU-Ukraine (Article 301.2) agreements. In the case where it is mentioned that the outcome of the Panel of Experts report shall be made available to the domestic mechanism, CSI is rated higher, since the civil society are kept abreast and as such involved. A fifth criterion refers to the *governments informing the domestic mechanism about the implementation of the report drawn up by the Panel of Experts*. CSI is scored higher when both the responding and requesting governments are required to inform their domestic mechanism. This is, for example, the case in the EU-Canada (Article 23.10.12) and EU-Singapore (Article 13.17.9) agreement. A sixth criterion determines the involvement of the *civil society*

²⁵ In EU trade agreements, the sustainable development chapters are excluded from the general dispute settlement system of the trade agreement as a whole. When a violation of labour or environmental provisions arises, the issue can be discussed in government consultations. As a last resort, a panel of experts can be established. However, no sanction is foreseen if the panel's recommendations are not followed up.

mechanisms in monitoring the implementation of the report drawn up by the Panel of Experts. In the EU-Georgia agreement this possibility is explicitly mentioned while it is not the case in, for instance, the EU-Peru-Colombia agreement. CSI is rated higher when civil society may submit observations in this regard.

3 SIGNIFICANT VARIATION: OUTCOME AND COMPARATIVE ANALYSIS

Table 1 presents the scores on the different criteria and clusters, based on the codebook that was developed for this purpose. This mapping exercise shows a strong variation between the different EU trade agreements. Overall (see ‘Total’ in Table 1), some agreements score much higher on the CSI Index than others. In addition, there is variation within and between different clusters. Some agreements have a similar score on the overall CSI Index while featuring significantly different scores on separate clusters and criteria, respectively.

This section provides a more general picture of the broad variation found and elaborates on the substantial differences between the CSI provisions. It is structured around the overall scores of the CSI Index. Therefore a distinction between three groups is made. First, the EU-Canada and EU-Korea agreements belong to the group with the highest score. This can mainly be attributed to their emphasis on participants’ independence, membership scope, and most of all dispute settlement. Second, the EU-Georgia, EU-Moldova, EU-Vietnam, and EU-Ukraine agreements constitute the intermediate group. All of them score relatively high on the criteria referring to membership scope, transnational meeting, and interaction between civil society and the Parties. Third, the EU-Central America, EU-Singapore, EU-Peru-Colombia, and EU-Ecuador agreements constitute the group with the lowest scores on each cluster.

3.1 HIGH CSI

In the first group, the EU-Canada agreement scores comparatively high. Concerning the membership scope, it is the only agreement that creates separate domestic groups for labour and environmental issues. Another unique provision is the obligation of the governments to follow up annually on the communications from the transnational civil society meetings: ‘any view or opinion of the Civil Society Forum shall be presented to the Parties directly, or through the consultative mechanisms (...) The Committee on Trade and Sustainable Development shall report annually on the follow-up to those communications (Art. 22.4.4(b))’. This obligatory two-way communication results in a remarkably high score for the criterion on interaction with the Parties. The EU-Canada trade agreement also

Table 1CSI Index (* Year Conclusion Negotiations)

Cluster	Criterion	Peru-Colombia (2010)*	Ecuador (2014)	Central America (2010)	Singapore (2014)	Ukraine (2011)	Vietnam (2015)	Georgia (2013)	Moldova (2013)	Korea (2009)	Canada (2014)
Independence participants	Term	2	2	1	0	2	0	2	2	2	2
	Independence mentioned	0	0	1	1	1	1	1	1	1	1
	Selection	0	0	1	1	1	0	1	1	1	1
	SUBTOTAL	2	2	3	2	4	1	4	4	4	4
Scope membership	Domestic mechanism	0	0	1	1	0	1	1	1	0	2
	Novelty	0	0	1	0	0	0	0	0	2	0
	Transnational mechanism	0	0	1	1	2	4	2	2	3	2
	Presence state actors	1	1	0	1	1	1	1	1	1	1
Operation transnational mechanism	SUBTOTAL	1	1	3	3	3	6	4	4	6	5
	Deadline	1	1	0	0	1	1	1	1	1	0
	Reoccurrence	1	1	1	0	1	1	1	1	1	1
	Independence for organization	0	0	0	0	1	0	0	0	1	0
	SUBTOTAL	2	2	1	0	3	2	2	2	3	1

scores high on the dispute settlement cluster where the domestic group can give advice to the government consultation and is involved in the monitoring of the implementation of the report of Panel of Experts.

The EU-Korea trade agreement was the first EU agreement creating civil society mechanisms. It also scores high, however with a different emphasis on certain criteria than the agreement with Canada: the determining clusters here concern the scope of membership and dispute settlement. First, the EU-Korea trade agreement is the only agreement establishing new domestic groups for the specific purpose of this agreement. Contrary to the other agreements, it is not stipulated that existing groups can be consulted for this purpose. Moreover, it is the only agreement where the closed transnational meeting comprises only the members of each domestic group and not additional members. In addition, this transnational mechanism does not depend on the Parties to convene these meetings and can determine its own meeting frequency. This strong independence is a rare provision, only shared with the EU-Ukraine agreement.

Second, in the EU-Korea trade agreement the domestic groups can play a more important role in providing input for the dispute settlement mechanisms. This is different from the EU-Canada agreement where civil society can play a role in the follow-up of these mechanisms. It should also be noted that this agreement scores remarkably low on interaction with the Parties. Contrary to the EU-Canada agreement, no interaction is foreseen between the domestic group and the Parties, and the provision describing the interaction between the transnational meeting and the Parties is much weaker: 'The Parties can present an update on the implementation of this Chapter to the Civil Society Forum. The views, opinions or findings of the Civil Society Forum can be submitted to the Parties directly or through the Domestic Advisory Group(s)' (Art. 13.12.3).

3.2 MEDIUM CSI

In the intermediate group, the CSI Index scores are close to each other. The civil society provisions in the EU-Georgia and EU-Moldova agreements are identical.²⁶ Interestingly, however, there are significant differences between the scores on the clusters and criteria of these agreements and the EU-Vietnam and EU-Ukraine agreements.

For some criteria, the EU-Georgia, EU-Moldova, and EU-Vietnam agreements display strong resemblances. For instance, the three agreements score relatively high on interaction with the Parties. First, two-way communication is

²⁶ An interesting difference with the other agreements is the explicit reference to civil society organizations established in their 'own territories'.

created by the obligation of the governments to report on the implementation of the sustainable development chapter during the transnational meetings together with the submission of the report (EU-Vietnam) and views and opinions (EU-Georgia and EU-Moldova) of these transnational meetings to the Parties. Second, the possibility is created for the domestic mechanisms to communicate their views and recommendations to their own government (specified in the EU-Vietnam agreement) or potentially to both governments through the intergovernmental body as it is not specified in the EU-Georgia and EU-Moldova trade agreements. This explicit reference to 'its respective party' in the EU-Vietnam trade agreement (Article 15.4) is a notable difference. In addition, the criteria on civil society interaction with the dispute settlement mechanism are exactly the same in all three agreements. Here, the domestic mechanisms may give their advice during government consultations, and they are informed about and may submit, together with the transnational mechanism, observations on the implementation of the report of the Panel of Experts. These agreements do not score as high as the EU-Korea or EU-Canada agreements because the provisions referring to the consultation of the domestic groups to receive input for the dispute settlement mechanisms remain more voluntary.

However, the EU-Vietnam trade agreement scores differently on several other criteria and shows some peculiarities. On the one hand, it scores very high on the membership score of the transnational meetings as it involves both the domestic groups and other stakeholders. This is unique compared to all the other agreements. On the other hand, it scores low on other criteria. As indicated in the previous section, the agreement only refers to 'stakeholders' and never to 'civil society' (similar to the EU-Singapore agreement). In addition, the selection of the members of the domestic groups is determined by domestic procedures (as with the EU-Peru-Colombia and EU-Ecuador agreements).

Interestingly, the EU-Ukraine agreement differs from the others in the intermediate category, including the agreements with the other Eastern Partnership countries Georgia and Moldova. The following provisions are noteworthy. First, regarding the transnational meeting, and similarly to the EU-Korea trade agreement, this meeting in the EU-Ukraine agreement is more ambitious since it does not depend on the Parties to be convened. Second, even though the EU-Ukraine agreement scores similar to the others on civil society interaction, a closer look at the criteria reveals significant differences. For instance, the EU-Ukraine agreement foresees the possibility for the domestic group to function as an intermediary for communications of the transnational meeting. The latter is a provision only shared with the EU-Korea and EU-Canada agreements, and is the only communication channel created for interaction between civil society organizations in the domestic

groups and transnational meetings. Third, the EU-Ukraine agreement scores particularly low on dispute settlement, where it does not involve civil society in the government consultation and the follow-up of the Panel of Expert report.

3.3 Low CSI

The third group consists of the EU-Central America, EU-Singapore, EU-Peru-Colombia, and EU-Ecuador trade agreements. These agreements score low on all clusters. For instance, they all score very low on scope of membership and operation of the transnational meeting, and extremely low on the cluster on dispute settlement. However, there are noteworthy peculiarities and differences, which will be discussed here.

There are two particularities that are unique to the EU-Central America agreement. First, there is a provision creating the opportunity to enforce existing bodies should they be consulted as domestic groups; this positively influences the CSI score. Second, there is a possibility to involve state actors, namely ‘local public authorities’; this negatively influences the CSI score.

Even though the EU-Singapore agreement has the same overall score as the EU agreement with Central America, it differs from the other agreements in this group on certain criteria. First, the EU-Singapore agreement contains, albeit weak, CSI provisions in the dispute settlement mechanism. This is contrary to the EU-Central America and EU-Colombia-Peru agreements, which do not refer at all to CSI in dispute settlement. Second, the EU-Singapore, EU-Peru-Colombia, and EU-Ecuador agreements score lower than the EU-Central America agreement on the interaction between the transnational meetings and the Parties; however, the three agreements level this by mentioning the possibility for the domestic group to submit views or recommendations to their respective Parties. Third, the EU-Singapore agreement only refers to ‘stakeholders’ and never to ‘civil society’. Fourth, it also scores the lowest of all the agreements on the operation of the transnational meetings. In this context, the agreement does not mention a deadline by when the Parties should agree on the operation of the transnational meeting. This provision is included in all agreements except for the EU-Singapore and EU-Central America agreements. In addition, and contrary to all other agreements, the EU-Singapore agreement does not explicitly foresee an annual transnational meeting. The organization of these meetings depends entirely on whether a meeting of the intergovernmental body takes place, which is not guaranteed as it ‘shall meet during the first two years after the agreement enters into force and thereafter as necessary’ (Article 13.15.3). This explains the low score on the criteria ‘reoccurrence’ and ‘dependence to intergovernmental body’.

The EU agreements with Peru-Colombia and Ecuador score lowest on the CSI Index for a number of reasons. First, in contrast to all other agreements, there is no mention of the need for the members of the domestic groups to be 'independent'. Second, their selection should be 'in accordance with domestic law', thus depending on domestic procedures as is the case in the EU-Vietnam trade agreement. Third, the transnational meeting constitutes a 'session with the public at large' where the members of the domestic group 'are allowed to participate', resulting in a very vague description of the required participants, which is much weaker than in most other agreements.

In sum, we have shown that there is considerable variation between CSI in EU trade agreements. The CSI Index makes it possible to distinguish three categories of trade agreements: those with a high, medium, and low level of CSI. In addition, we identified more subtle variations between agreements within the same category, and a number of particularities that make 'high CSI' trade agreements score lower on some criteria and 'low CSI' agreements score higher on specific criteria. We have thus largely confirmed that there is a significant degree of flexibility within the general template of CSI in the sustainable development chapter.

4 CONCLUSION

This article aimed to shed light on a new phenomenon in the most recent generation of EU trade agreements, namely the involvement of civil society in the sustainable development chapter. Drawing on an innovative CSI Index consisting of twenty-one criteria in five different clusters (i.e. participants' independence from governments, scope of membership, operation of transnational mechanism, interaction, and dispute settlement mechanism), it allowed comparison of different degrees of CSI in ten EU agreements concluded with sixteen countries. This detailed mapping revealed a remarkable degree of variation in the extent to which civil society organizations can be involved. We found that, notwithstanding the fact that a common template is used, there appears to be crucial variation between agreements. We identified three categories of agreements (high, medium, and low CSI) and analysed relevant differences between and within these categories.

With this study we aimed to provide a nuanced picture of how EU trade agreements exhibit CSI. We can thus increase our knowledge on the role of civil society in EU trade agreements beyond *ex ante* involvement of interest groups, that is during EU trade agreement negotiations,²⁷ and beyond *ex post* learning and

²⁷ A. Dür & D. De Bièvre, *Inclusion Without Influence? NGOs in European Trade Policy*, 27 J. Pub. Pol'y (2007).

dialogues of civil society actors after the EU-Korea trade agreement,²⁸ inaugurating a new generation of CSI. The study also emphasizes that transnational civil society engagement in trade agreements is not limited to the North American context²⁹ but has also evolved in recent years in the EU approach. Even more, while CSI on labour-related issues in US trade agreements is normally linked to public complaints and, if deemed appropriate by decision makers, to state-actor meetings,³⁰ the EU has pioneered a promising multifaceted approach for CSI which in the best case allows for regular, independent, and transparent interactions on trade-related issues of interest to a broader public.

Now that the CSI provisions in EU trade agreements have been meticulously mapped and their variation thoroughly analysed, the stage is set for further research on the explanations for this large variation. These could relate, for example, to institutional EU path dependency, leading to an incremental CSI ambition; trade power asymmetries, where the strongest partner can impose its will; the level of sustainable development in the trade partners, where the trade partner with the lowest level of sustainable development strives for a low level of CSI; EU competitiveness interests, where the EU aims to reduce or eliminate the trade partners' comparative advantages by increasing their sustainable development standards; existing civil society participation, where high civil society participation in the trade partners is reflected in high CSI in the trade agreement; and finally the trade partners' negotiation skills and capacity. This knowledge would lead to a better understanding of the conducive and hindering conditions for CSI, which will be relevant even beyond the scope of CSI in EU trade agreements.

In addition to the explanations for CSI variation, our findings invite further research on the implications for the implementation of the CSI provisions. While we could show that CSI varies considerably between EU agreements, there is still uncertainty to what extent higher CSI in agreements also leads to higher CSI in practice. To be sure, the more precise the requirements are in a trade agreement, the more legal inducement exists to actually involve civil society actors. To illustrate, due to a lack of specific requirements, the transnational mechanism of the EU-CARIFORUM Economic Partnership Agreement (EPA), the so-called Consultative Committee, was only inaugurated six years after the EPA had been signed.³¹ Moreover, a recent study on Peru's compliance with the sustainable development chapter of the EU-Peru-Colombia agreement indicated how on eight different criteria the low level of commitment in the treaty had already had

²⁸ Postnikov & Bastiaens, *supra* n. 5.

²⁹ T. Kay, *NAFTA and the Politics of Labor Transnationalism* (Cambridge University Press 2011).

³⁰ M. Oehri, *US and EU Labor Governance in the Dominican Republic: Contrasting the DR-CAFTA and the CARIFORUM-EPA De Jure and De Facto*, 89 Bull. Comp. Lab. Rel. (2015).

³¹ Oehri, *supra* n. 5 and n. 30.

consequences in policy practice, including the domestic mechanisms' little or no independence and the use of existing but not effectively functioning advisory groups.³² And yet, while relevant articles in EU trade agreements set a starting point for CSI, procedural guidelines on the actual functioning of CSI mechanisms are normally agreed upon during the inauguration of these mechanisms. Accordingly, further research should look into the actual functioning and effectiveness of CSI in EU trade agreements.

ANNEX: CODEBOOK CIVIL SOCIETY INVOLVEMENT INDEX

A. **Independence participants:**

- i. Term:
 - stakeholder: 0
 - civil society mentioned once: 1
 - civil society mentioned more than once: 2
- ii. Independence mentioned:
 - not mentioned: 0
 - mentioned: 1
- iii. Selection domestic mechanism:
 - explicit mention of domestic procedures: 0
 - no mention of domestic procedures: 1

B. **Scope membership:**

- i. specificity domestic mechanism:
 - labour, environment, sustainable development: 0
 - other groups (e.g. workers' organizations) explicitly mentioned: 1
 - separate domestic mechanisms for labour & environmental issues: 2
- ii. Novelty:
 - new or existing: 0
 - new or existing with comment to reinforce existing groups: 1
 - new: 2
- iii. Transnational:
 - public at large: 0
 - list relevant organizations: 1
 - include members domestic mechanism, open: 2
 - include members domestic mechanism, closed: 3

³² J. Orbie & L. Van den Putte, *Labour Rights in Peru and the EU Trade Agreement: Compliance with the Commitments Under the Sustainable Development Chapter*, ÖFSE Working Paper Series (Austrian Foundation for Development Research 2016).

include domestic mechanism as a whole, open: 4

iv. Presence state actor:

yes: 0

not mentioned: 1

C. Operation transnational meeting:

i. Deadline for Parties

no: 0

yes: 1

ii. Reoccurrence:

‘as necessary’: 0

once a year, unless otherwise agreed by the Parties: 1

iii. Independence from the intergovernmental body for organization:

no: 0

yes: 1

D. Interaction:

i. Among domestic and transnational mechanisms:

no communication: 0

one way communication (domestic to transnational or *vice versa*): 1

ii. Civil society mechanisms and governmental actors:

a. Domestic mechanism & Parties

b. Domestic mechanism & own government

c. Transnational & governmental actors (Parties/intergovernmental body)

d. Domestic mechanism as intermediate for transnational

no communication: 0

one-way communication (X to Y or Y to X) can/may: 1

one-way communication (X to Y or Y to X) shall/will: 2

exchange of views or conduct a dialogue: 3

two-way communication (X <-> Y) can/may: 4

two-way communication (X <-> Y) shall/will: 5

follow-up: X reacts to communication Y: shall/will: 6

E. Dispute Settlement mechanism:

i. Domestic mechanism communication basis for initiating Government Consultations

no: 0

may/can: 1

- ii. Government consultation/Committee asks advice from domestic mechanism (during proceedings):
 - no: 0
 - may/can: 1
 - will/shall/should: 2
 - own initiative DAG: 3
- iii. Panel of Experts asks advice from domestic mechanism (during proceedings):
 - no: 0
 - may/can: 1
 - will/shall/should: 2
- iv. Panel of Experts informs domestic mechanism about outcome:
 - no: 0
 - may/can: 1
 - will/shall/should: 2
- v. Parties inform domestic mechanism about implementation Panel of Experts' report :
 - no: 0
 - responding Party shall inform: 1
 - responding and requesting Party shall inform: 2
- vi. Civil society mechanisms involvement in monitoring of implementation Panel of Experts' report:
 - no: 0
 - stakeholders may submit observations: 1
 - domestic mechanism may submit observations: 2

**Article 4: Explaining variation of civil society
involvement in EU trade agreements**

by Myriam Oehri, Jan Orbie, Deborah Martens, Lore Van den Putte

Explaining variation of civil society involvement in EU trade agreements

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Despite an overall trend towards more civil society involvement (CSI) in trade agreements signed by the European Union (EU), the extent to which civil society actors can engage in the context of the chapter on trade and sustainable development varies significantly. The CSI Index, analysing 10 EU trade agreements with 16 countries, reveals high (Canada, South Korea), medium (Georgia, Moldova, Vietnam, Ukraine), and low (Central America, Singapore, Peru-Colombia, Ecuador) degrees of CSI. This paper aims to explain this surprising and remarkable variation. Based on qualitative-interpretative assessments and drawing on interview data, primary documents, and secondary literature, we examine five plausible explanations. While none of these can fully and exclusively account for CSI variation, the ‘third country domestic resonance’ explanation, considering the degree of civil society participation in domestic policy making, turns out to be most powerful. In addition, we found evidence of learning experiences drawn by the EU over time.

Keywords: EU, trade agreements, civil society, sustainable development, labour rights

Introduction

Involvement of civil society in global governance has been growing over the last decades (Hall, et al., 2014, Scholte, 2004). International institutions increasingly allow “participation of different sets of actors” (Raustiala and Victor, 2004), including NGOs, corporations, and foundations (Alter and Meunier, 2009; Tallberg et al., 2014). However, the degrees of access and potential influence of non-state actors varies throughout different institutions. Only recently, and partly with a view to specific policy fields, have scholars started to offer explanations for this variation (e.g., Betsill and Corell, 2001; Tallberg et al., 2014).

The trend of increased openness in a variety of formats is also found in the European Union (EU). Since the White Paper on European Governance (2001), the EU has strongly emphasized

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the role of civil society in various policy fields. This also includes EU trade policy, an area that has witnessed heavy contestation with the ‘battle of Seattle’ against the World Trade Organisation (WTO) in 1999, the STOP EPA campaign in the 2000s, and most notably the recent protest against the EU trade agreements with Canada and the US. In response to concerns about the implications of its trade policy on, firstly, democracy, and secondly, sustainable development, the ‘new generation’ of EU trade agreements has included a separate chapter on ‘trade and sustainable development’. These ‘TSD chapters’ create mechanisms for civil society organisations to discuss and monitor the parties’ commitments to sustainable development in the context of the trade agreement. These new mechanisms, that were first introduced in the EU-Korea trade agreement in 2010, typically contain two elements. First, a domestic civil society mechanism, often called domestic advisory groups, in which representatives of three constituencies (labour, environment and business) within the EU and its trading partner(s) participate. Second, a transnational mechanism where civil society of both parties meet together (Orbie et al., 2016).

While EU policymakers clearly promote these mechanisms as important instruments to make trade policy more fair and legitimate (European Commission, 2015; European Parliament, 2009, 2017), academic research on the topic is still at an early stage. Most scholars have focused on human rights and labour provisions in TSD chapters (Bartels, 2013; Campling et al., 2015), often contrasting the EU’s approach with that of other key trade players such as the US (Ebert and Posthuma, 2011; Horn et al., 2010; International Institute for Labour Studies, 2015; Oehri, 2015a, 2015b; Leeg, 2018). There are only a few studies that (partly) consider the civil society meetings (Altintzis, 2013; Harrison et al., 2018; ILO, 2016; Orbie et al., 2016; Postnikov and Bastiaens, 2014; Van den Putte, 2015). However, these studies typically lump all the TSD chapters and the civil society provisions of the ‘new generation’ trade agreements together, without paying attention to differences between the agreements. Indeed, there is an implicit or explicit assumption that the same templates on civil society involvement come back in all agreements. Studies have also shown that the EU tends to use templates or ‘one size fits all’ approaches in its foreign relations (Bicchi, 2006; Börzel and Risse, 2004) including trade policy (Araujo, 2016; Hoffmeister, 2013; Jurje and Lavenex, 2014).

In the case of CSI, although the EU uses the same ‘template’ of domestic and transnational mechanisms, there is surprising variation in how exactly these are defined and organised. While this variation has been mapped in our previous research that developed an innovative CSI Index (Martens et al., 2018), we do not yet understand why CSI diverges so significantly across the different EU trade agreements. Explanations for this variation require careful scrutiny for at least two reasons. First, the formulation of civil society mechanisms in the treaties is a very political matter, not least because it touches on labour and human rights, environmental and democratic governance issues that are sensitive within domestic politics. Second, how civil society mechanisms are formulated in the text largely affects their actual working in practice. As was shown in different reports on Peruvian non-compliance with several sustainable development commitments and its failure to consult with civil society appropriately (EPRS, 2018; Orbie et al., 2017; Plataforma Europa Perú, 2017), the legal wording of the provisions has important consequences on the obligations of the parties and how the EU can enforce them (see Malmström, 2018).

The purpose of this paper is therefore to explain the significant variation of CSI degrees across EU trade agreements. We will elaborate five plausible explanations that are prevalent in the literature and policy debates and validate them by looking into the most appropriate data for the estimated explanation. Since the number of agreements is relatively small, explanations are inevitably complex and literature is almost non-existing, quantitative or standardised approaches are not entirely appropriate to conduct this research. Nonetheless, we aim to go beyond a purely interpretive, single case study method and produce insights that are to some extent generalizable. Therefore, we engaged in a more pragmatic approach whereby the five explanations were operationalized by calibrating different data sources into four scores which allowed for a systematic and comparative analysis.

There is a growing amount of comparative studies on the design of trade agreements (see Dür and Elsig, 2015). Whereas the comprehensive Design of Trade Agreements (DESTA) database does not mention civil society involvement as a separate category, Raess and Sari (2018) included institutions overseeing the labour-related commitments and the involvement of third parties in their dataset. Accordingly, this paper wants to contribute to a better understanding of the dynamics behind the legal design of agreements. In more theoretical terms, it also contributes to global governance literature on civil society access and influence (Hall et al, 2014; Keohane et al., 2000).

This article is organised as follows. The next section discusses differences between the civil society provisions in EU trade agreements. Subsequently, we present five explanations for this variation, followed by their operationalisation. This allows us to evaluate the accuracy of each explanation in the next section. In the discussion and concluding sections, we highlight this study's findings and the implications it has for politics and research.

Varying civil society involvement

Variation in the extent to which civil society appears in the TSD chapters has been overlooked by existing literature and policy debates. This section discusses this variation, thereby synthesizing earlier research (Martens et al., 2018) and laying the groundwork for the following sections. Through the comparative mapping of all the relevant EU trade agreements, we constructed a CSI Index that features five clusters. The first cluster, the independence of participants, concerns the extent to which participants in these civil society mechanisms are truly independent from the Parties. The second cluster, the scope of membership, reflects among others whether the agreement specifically sets out which groups can participate in the mechanisms and whether state actors can be present. The third cluster, the operation of the transnational mechanism, deals with the conditions under which the transnational mechanism is organised. The fourth cluster concerns interaction, both among the civil society mechanisms as well as between them and the Parties. The fifth and final cluster reflects CSI in the settlement of disputes between the Parties concerning the implementation of the TSD chapter.

Applying this CSI Index to 10 EU trade agreements allows us to distinguish three levels of CSI:

high, medium and low CSI scores (see Table 1). First, the EU-Canada and EU-Korea agreements belong to the group with the highest score. This can mainly be attributed to their emphasis on participants' independence, membership scope, and most of all dispute settlement. These are the only two agreements requesting the establishment of specific and new mechanisms to deal with the monitoring of sustainable development commitments. What particularly characterizes these agreements is also that the domestic civil society mechanisms play an important role in the dispute settlement mechanism that applies in the case of violation of the sustainable development principles.

Second, the EU-Georgia, EU-Moldova, EU-Vietnam, and EU-Ukraine agreements constitute the medium group. The EU-Georgia, EU-Moldova and EU-Vietnam agreement all score relatively high when it comes to the interaction of the mechanisms with the Parties and the involvement in dispute settlement. The EU-Ukraine agreement, while having a similar total score on all five clusters, is different from the other agreements in this category. Most importantly, it has a more ambitious transnational meeting, the interaction between civil society mechanisms is stronger, and it scores lower on involvement in the dispute settlement mechanisms.

Third, the EU-Central America, EU-Singapore, EU-Peru-Colombia, and EU-Ecuador agreements constitute the group with very low scores on, among others, the scope of membership, the operation of the transnational meeting, and involvement in the dispute settlement mechanism. For example, unlike all other agreements investigated, the EU-Singapore and EU-Central America agreements do not foresee a deadline by when the Parties should agree on the operation of the transnational meeting. While the EU-Singapore agreement contains some, albeit weak, references to CSI in the dispute settlement mechanism, the EU-Central America, the EU-Colombia-Peru and the EU-Ecuador agreements do not refer at all to civil society in this regard.

Theorizing variation: five explanations

Drawing on relevant theories of international relations and EU studies, secondary literature expert interviews with EU officials, and discussions with academic peers, we elaborate on the five most plausible explanations for the level of CSI in EU trade agreements. They include *EU experience*, *EU protectionism*, and *EU norms*, *EU-third country trade power*, and *third country resonance*. While sustainable development has various dimensions, we focus mainly on labour-related variables, as labour rights concerns were the original reason to include TSD chapters and labour issues have also been the most contested parts of the chapters.

EU experience: The first explanation derives from new-institutionalism which highlights institutional frameworks. When reflecting on the political integration of the EU social and labour market policy since the mid-1980s, Jensen (2000) introduced the idea of legalistic/institutional forms of spillover, meaning that the relevant treaties in the field have been revised based on specific goals of previous treaties. A similar picture emerges as far as labour rights provisions in EU trade agreements are concerned: they have evolved over the years and feature distinctive generations (Bossuyt, 2009, p. 703; ILO, 2016, pp. 39-41; Van den Putte et al., 2013, p. 47). The EU-CARIFORUM Economic Partnership Agreement (EPA)

(negotiated 2002-2007) is the first agreement to include a mechanism for transnational dialogue with civil society actors. Previous EU agreements signed with Mexico in 1997, South Africa in 1999, and Chile in 2002 did not contain such mechanisms. However, the CSI mechanism in the EU-CARIFORUM EPA is different from the ‘new generation’ trade agreements as it covers the agreement as a whole (not specifically trade and sustainable development) and there is no domestic component (only transnational). The subsequent EU-Korea trade agreement (negotiated 2007-2009) pioneers a template in which the TSD chapter explicitly refers to CSI mechanisms at both the domestic and transnational level. This extension from the CARIFORUM EPA to the new generation agreements may be seen as a legalistic and institutional spillover as theorised by Jensen (2000). According to the same logic it may be expected that every subsequent agreement would become more ambitious in involving civil society. Indeed, this was also suggested by an EU negotiator who emphasised that the European Commission is constantly reviewing the negotiation processes to see how they can improve. Therefore the negotiation text they table has become much more detailed (interview, DG Trade, 4 August 2016). With trade policy becoming increasingly contested (Siles-Brügge, 2014; Young, 2017), and at the same time more and more integrated in the EU’s external action since the Lisbon treaty (2009), expectations for more political provisions such as CSI have increased. As the EU undergoes a learning process both with regard to negotiation and implementation, it can thus be expected that civil society provisions in EU trade agreements have become incrementally more ambitious over time.

EXPL 1: The more recently a partner country has concluded a trade agreement with the EU, the higher CSI is in an EU trade agreement with that country.

EU protectionism: In light of a mercantilist perspective, linking trade with labour provisions can be motivated by a rational actors’ desire to maximise material benefits (Bhagwati, 2002). A social clause at multilateral level has been specifically opposed by developing countries, which feared “Western protectionism” (Vandenberghe, 2008, p. 563) and the potential elimination of their competitive advantages due to stricter labour rights. Lechner (2016) found that non-trade issues, such as labour and environmental provisions, become more important in trade agreements when protectionist concerns trump pressure for trade liberalisation. In the US the perils of a “race to the bottom” of working conditions is said having influenced the way the US included labour standards in its trade policy instruments (Gonzalez-Garibay, 2009, pp. 767-768). Also the EU is not spared from such assumptions. Several EU trade partners perceive the EU’s trade-labour linkage as protectionist (e.g., *ibid.*, p. 783; Vandenberghe, 2008, p. 563). The involvement of CSI in EU trade agreements, which aims at facilitating the protection of labour standards, could accordingly be seen as an instrument of protectionism as it increases labour standards abroad and thus defends the EU labour market.

EXPL 2: The more protectionist interests the EU has towards a partner country, the higher CSI is in an EU trade agreement with that country.

EU norms: The EU trade-labour nexus is not merely conceived of as a strategy of material incentives, it has also been read from a normative perspective (e.g., Behrens and Janusch, 2012; Manners, 2009). This perspective assumes that the EU functions as an advocate of human and

labour rights as it is concerned about the protection of workers in other countries. In the absence of a strong foreign policy apparatus, the EU will use external relations instruments such as trade agreements to pursue these normative goals. The underlying logic is that for a number of reasons the EU is predisposed to act normatively, diffusing European norms such as democracy, human rights, social solidarity, sustainable development, anti-discrimination and good governance (Manners, 2002, pp. 242-243), all of which relate closely to labour rights and the associated civil society mechanisms (Orbie, 2011, pp. 162-165). As noted by Manners, the long-term institutionalisation of opportunities for dialogue through the agreements' civil society mechanisms is perhaps more important than the short-term success or failure of EU promotion of labour rights (Manners, 2009, p. 801). When labour rights are seriously violated in third countries, it becomes all the more necessary to include stronger social conditionality and the concomitant civil society monitoring mechanisms in EU trade agreements with these countries. According to this explanation, the partner states' labour rights behaviours will affect the extent of CSI in trade agreements with the EU.

EXPL 3: The more EU (labour related) norms are disrespected in a partner country, the higher CSI is in an EU trade agreement with that country.

EU-third country trade power relation: (Neoclassical) realist considerations need to be taken into account when aiming to explain EU foreign policy making in general (Pollack, 2012, pp. 8-9; Rynning, 2005; Toje and Kunz, 2012) and EU trade policy outcomes in particular (Garcia, 2013, p. 523; Ross Smith, 2015). In light of this perspective, power relations plays a critical role when convincing other states to accept principles they would not accept otherwise (see Börzel and Risse, 2012, p. 13). The EU's "trade power" (Meunier and Nicolaïdis, 2006) and "market power" (Damro, 2012) are considered important sources of EU influence in external rule promotion. When power asymmetries are in its favour, the EU can impose its models upon third countries, by using agreements among other instruments (Lavenex and Schimmelfennig, 2009, p. 803). Departing from the EU's self-declared objective to promote a high level of CSI through trade agreements (European Commission, 2015, pp. 18-19), the corresponding explanation reads as follows:

EXPL 4: The more dependent a partner country is on trade with the EU, the higher CSI is in an EU trade agreement with that country.

Third country resonance: Inversely, the agreement may reflect the preferences of third countries. Since a greater role for civil society directly relates to democracy and human rights, this is often considered extremely sensitive for the EU's negotiation partners (interview, Costa Rican official, 22 June 2015; Honduran official, 10 May 2016; DG Trade, 4 August 2016). Therefore, we also consider third countries' domestic political structures when explaining CSI in EU trade agreements. This is relevant as EU external rule promotion can be shaped by the compatibility with the institutional structures of third countries' domestic politics (Lavenex and Schimmelfennig, 2009, p. 804). Regarding the system of government, "the more authoritarian a regime is, the less likely the EU is to influence domestic institutional change" (Börzel and Risse, 2009, p. 12). This applies particularly to EU demands for domestic reforms including human rights and democracy (ibid.). Raess et al. (2018) also point to the importance of domestic

factors as they found that strong trade unions in democracies lead to more far-reaching labour provisions than in authoritarian regimes as governments are less accountable in the latter. Accordingly, the democratic quality of a third country is likely to influence the extent of CSI in EU trade agreements as this is a way to further increase democratic practices and to allow civil society actors to have a voice in trade-related issues (see also Dür and De Bièvre, 2007). The domestic resonance explanation, deriving from an institutionalist perspective, is the following:

EXPL 5: The more a partner country's domestic system is democratic, the higher CSI is in an EU trade agreement with that country.

Operationalisation

In order to assess their explanatory value, we further operationalize each explanation. We developed a score for each explanation and for every agreement that reflects to what extent a higher CSI can be expected. These scores are based on a number of data sources that were chosen based on three criteria: they provide recent and up to date information, they are of high quality and do not display inconsequent fluctuations, and they are available for all the countries thereby allowing for comparative analysis.

To evaluate the accuracy of EXPL 1 on *EU experience*, we determine the month and the year in which the negotiations of a trade agreement between the EU and a partner country were concluded. The conclusion date is the most relevant one because we know from published negotiating texts and interviews that the TSD chapter is typically negotiated at the very end of the process (interview, DG Trade, 4 August 2016).

We measure EXPL 2 on *EU protectionism* by the labour costs of the EU trade partner. It is assessed by the third country's minimum wage as this constitutes a primary determinant for labour costs.³ The data are derived from the Doing Business Report of the World Bank (2016) that measures regulatory quality and efficiency of 189 economies.⁴ As labour costs constitute one of several other determinants of competitiveness, for a robustness check, we take into account the Global Competitiveness Report by the World Economic Forum (2016) which is the most comprehensive assessment of national competitiveness of 140 economies worldwide.⁵ The overall global competitiveness scores produced in this report are in line with the minimum wage scores of the Doing Business Report.

For EXPL 3 on *EU norms* we measure the degree of a third country's domestic labour rights behaviour based on its overall record of freedom of association and collective bargaining (FACB). FACB are core values of the ILO and as such they are enshrined in the ILO Declaration on Fundamental Principles and Rights at Work (1998), among other key documents. The protection or violation of these process rights generally facilitate or restrict the

3. See also http://www.ilo.org/ilostat-files/Documents/description_EAR_EN.pdf

4. See also <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Chapters/DB16-Mini-Book.pdf> (accessed July 2016).

5. See also <http://reports.weforum.org/global-competitiveness-report-2015-2016/> (accessed July 2016).

promotion of social dialogue and worker rights overall.⁶ We rely on the comprehensive FACB Indicators provided by Sari and Kucera (2016) for the year 2015, which classifies the countries according to a scale from 1 (least labour rights violations) to 10 (most labour right violations).⁷

We assess EXPL 4 on *EU-third country trade power relation* with the variable of asymmetric trade interdependence as it indicates the power dynamics in the relationship between the EU and a partner country. We generate this data by the EU's and the partner country's mutual exports and imports in total goods based on the trade statistics of 2015, available on the websites of the European Commission. As trade power cannot be seen independently from political power (Galtung, 1972, p. 29, pp. 55-56), we conduct a robustness check by linking the political influence the EU enjoys over a trade partner to the degree of CSI in their trade agreement. In this regard, we measure the sphere of influence the EU has over third countries in line with four intensities of institutional association (see also Lavenex, 2004): neighbourhood policy, development cooperation, transnational cooperation, and weak bilateral relationship.

We determine the accuracy of EXPL 5 on *third country resonance* by the degree to which civil society actors can participate in domestic policy making of the EU's trade partner. Thus, we measure not so much the quantity or quality of civil society, but rather its effective participation. Not only does civil society participation constitute an essential component of democracy, it also approximates best domestic resonance. We rely on the Transformation Index of the Bertelsmann Stiftung (2016) which measures, among other aspects of democracy, the extent to which the political leadership enable the participation of civil society in the political process. It draws on a scale from 1 (lowest civil society participation) to 10 (highest civil society participation).⁸

Subsequently, the data were calibrated into four categories ranging from low (one cross) to high (four crosses) expected CSI. This calibration of the scores into four sets draws on case and context knowledge of the authors as well as their qualitative-interpretative assessments (e.g. Basurto and Speer, 2012, p. 165; Ragin, 2008). Table 1 summarises the calibrated scores of the different indicators. According to the respective explanation, more crosses would indicate higher CSI. Building on this analysis, the next section evaluates the relevance of each explanation.

6. See also ILO at <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm> (accessed April 2017).

7. See also <http://labour-rights-indicators.la.psu.edu/about> (accessed July 2016).

8. See also <https://www.bti-project.org/de/4579/materialien/bti-2016/> (accessed July 2016).

EXPLANATION	Indicator	Canada	Korea	Georgia	Moldova	Vietnam	Ukraine	Panama	Guatemala	El Salvador	Costa Rica	Honduras	Nicaragua	Singapore	Peru	Colombia	Ecuador
								Central America							Peru - Colombia		
CSI Index		High	High	Medium	Medium	Medium	Medium	Low						Low	Low		Low
EXPL 1 EU Experience	Time since conclusion	xxx	x	xxx	xxx	xxxx	xx	xx	xx	xx	xx	xx	xx	xxx	xx	xx	xxx
EXPL 2 EU Protectionism	Labour costs	x	xx	xxxx	xxxx	xxxx	xxxx	xxx	xxx	xxx	xxx	xxx	xxx	xx	xxx	xxx	xxx
EXPL 3 EU Norms	Freedom of Association and Collective Bargaining	x	xxx	xx	xx	xxxx	xxx	xxx	xxx	xxx	xx	xxx	xx	xxx	xxx	xxx	xxx
EXPL 4 EU-third country trade power	Import/export interdependence	x	xx	xxx	xxx	xx	xx	xxx	xxx	xxxx	xxx	xxx	xxxx	xx	xxx	xxx	xx
EXPL 5 Third country resonance	Civil society participation	xxxx	xx	xx	xxx	x	xx	xx	xx	xxx	xxx	xx	x	xx	xx	xx	x

Table 1. Calibrated scores of the explanations per trade partner (more x = higher expected civil society involvement)

Discussion

Building on the previous sections, we aim to assess which explanation(s) can account for the difference between high, medium, and low CSI countries, as well as more subtle differences between clusters of CSI.

First, the *EU experience explanation* does not hold as far as the overall CSI is concerned. We have no strong evidence that CSI would have gradually expanded since the EU-Korea agreement. On the contrary, the agreement with Korea, which is the first one of the ‘new generation’ and often considered as the ‘gold standard’ or ‘blueprint’ for subsequent agreements (Hoffmeister, 2013), has one of the highest CSI scores. With the exception of the EU-Canada agreement, all agreements negotiated since Korea scored lower on the CSI Index. Also recent agreements deviate (significantly) from the EU-Korea agreement CSI score, such as the low-scoring EU-Singapore (signed in 2014) and the medium-scoring EU-Vietnam (signed in 2015) agreements.

And yet, there are signs of a learning process when looking more closely at the clusters. We note subtle evolutions over the past decade. Notably, more emphasis is put on the interaction between civil society and the Parties. Whereas the EU-Korea trade agreement scores extremely low on this cluster, subsequent agreements are (much) more far-reaching. For example, the EU-Korea agreement did not foresee any interaction between the civil society mechanisms and the Parties. This was rectified through the rules of procedure of the intergovernmental body overseeing the implementation of the TSD chapter. The omission of this provision was thus corrected and this practice has been included in the subsequent agreements. In addition, the language of the provisions, evolving from ‘can’ to ‘shall’, has become increasingly obligatory.

That all subsequent agreements score higher than the EU-Peru-Colombia agreement may also be attributed to a learning experience. The implications of the weak provisions on civil society have become clear in practice, for instance that the Ministry of Labour of Peru can attend and even chair the domestic meetings, and that the EU institutions should not be informed about the agenda and meetings of the domestic Peruvian and Colombian mechanisms (Orbie and Van den Putte, 2017, pp. 13-14). EU officials acknowledge that it was a mistake to omit the word ‘independent’ and to be so lenient on the composition of the domestic group in the Peru-Colombia agreement, issues that have been corrected in subsequent agreements (interview, DG Trade, 4 August 2016).

According to the same interviewees, a learning effect has also taken place in relation to Vietnam. Although Vietnam does not have the highest CSI, it has indeed a surprisingly high value taken into account the very limited participation of civil society in the domestic political system. Officials closely involved suggest that the negotiations on the EU-Vietnam agreement (started in June 2012) took place at a time when the initial experiences with the civil society meetings under the EU-Korea, EU-Peru-Colombia, and EU-Central America agreements could be evaluated (first transnational meetings respectively in June 2012, February 2014 and in November 2014).

Second, the *EU protectionist explanation* seems difficult to be confirmed with regard to the overall CSI classifications. There are no strong indications that the EU would be more demanding towards countries with low minimum wages that enjoy competitive advantages towards the EU. Despite exhibiting (very) low minimum wages, the EU agreements with

Ukraine, Moldova, Georgia, and Vietnam score only intermediate. Similarly, the trade agreements with the Andean and Central American countries, situated in the midsection of the minimum wage range, score low on the CSI Index. Moreover, the two highest CSI scoring countries (Canada and Korea) have (relatively) high minimum wages. The only case being in line with the EU protectionist explanation is Singapore, a country with a comparatively high minimum wage featuring one of the lowest CSI scores.

The clusters show the same tendency as the overall CSI scores. The only exception is the cluster on interaction among civil society and governments. Here, when excluding Canada from the analysis, we see an upward trend starting with less ambitious CSI provisions concerning interaction in the agreements with countries with higher minimum wages to more ambitious provisions in the agreements with countries showing lower minimum wages. This evolution could indicate that the EU pushes for more interaction in more competitive countries, however further research would be necessary to confirm this claim. Overall, there is no consistent pattern supporting the EU protectionist explanation. These findings confirm existing research that concluded that the EU's social trade agenda has not been motivated by economic interests (Burgoon, 2009).

Third, one might find a justification for the *EU norms explanation* that CSI will be higher if workers' rights are more severely violated in the agreements with Korea (problematic labour rights, high CSI) and Singapore (less problematic labour rights, low CSI). However, it would be hard to maintain that the rest of the data display a clear pattern confirming this third explanation. In fact, the extent to which the fundamental labour rights of FACB have been respected cannot account for the CSI variation across the agreements. While workers' rights are severely disrespected in Vietnam, the agreement belongs to the medium CSI category. Similarly, while there are clear concerns about labour rights in Guatemala, Colombia, and Panama, the same countries belong to the low CSI category. Canada, where these rights are clearly more respected, scores the highest on CSI. In parallel to the analysis of the overall scores, the results of the clusters are dispersed and no clear patterns appear in the clusters.

Interestingly however, in the clusters 'scope membership' and 'dispute settlement mechanism' both extremes (trade partners disrespecting the most and the least FACB rights) score high. This indicates on the one hand that the domestic context of the country might be influential, in this case especially for countries adhering to the norms advanced by the EU (see *infra* domestic resonance). On the other hand, these cluster results suggest that the EU considers these aspects as particularly important when negotiating with countries severely disrespecting FACB rights, in this case Korea and Vietnam. As such, the latter confirms the EU norms explanation.

Fourth, the *EU-third country trade power explanation* can also be clearly dismissed with regard to the overall CSI degrees. Due to the most asymmetrical trade balance, the EU has the most trading power towards the Central American countries. However, the CSI score of the trade agreement between both regions is in the lowest category. On the other hand, those countries towards which the EU is less powerful (Canada and Korea) belong to the highest CSI category. Moreover, two countries that score relatively high on asymmetrical interdependence (Ukraine and Vietnam) still belong to the medium group of CSI. Similarly, the results of the clusters are very dispersed and do not show any patterns indicating the relevance of trade power in the level of CSI. Thus, the data go against the expectation that a higher asymmetrical trade interdependence would involve a higher CSI.

This finding was confirmed by the robustness check assessing the link with the political power of the EU in relation to its trade partner. Indeed, EU-third country political power hardly affects the degree of CSI in trade agreements. For instance, three countries (Georgia, Moldova, and Ukraine) have an aspiration to become EU member states and are therefore more obedient to EU influence. However they only belong to the medium category of CSI in EU FTAs. In contrast, although Canada is a transnational cooperation partner to the EU and thereby not submissive to the EU, it scores high with regard to the CSI Index. These findings on the limited effect of trade and political interdependence corroborate extant literature on labour-related mechanisms in EU (and US) agreements more generally (Oehri, 2015a). The only exception that confirms the trade and political power explanation is the EU-Vietnam agreement. It scores medium on the CSI Index and the EU-Vietnam relationship features asymmetrical dependency. The EU is an important development cooperation donor in Vietnam which also increases the EU's trade negotiation power. Within the European Commission, it was suggested that Vietnam would not have agreed with a relatively ambitious TSD chapter if this would not be compensated with substantial aid (interview, DG Trade, 4 August 2016).

Fifth, the explanatory power of the third countries' *domestic resonance explanation* seems much stronger as far as the overall CSI degrees are concerned. Our data do indeed suggest that the higher civil society participation is in a third country, the higher CSI will be in an EU trade agreement with that country. Most countries that score (very) low on civil society participation, such as Panama, Guatemala, Singapore, Colombia, Peru, Ecuador and Nicaragua, equally belong to the low CSI category. Several countries that score (very) high on civil society participation, equally score high (Canada) or medium (Moldova, Ukraine, Georgia) on the CSI Index. The results are somewhat distorted by the considerable variation within the Central American group on civil society participation (where Costa Rica and El Salvador score quite high). And yet, this could be explained by the fact that the EU-Central America trade agreement is a regional agreement and as such influenced by the low score on civil society participation of the majority of Central American states, reflecting a lowest common denominator. Overall, a tendency emerges from the data whereby countries that have high domestic civil society participation equally tend to agree on more far-reaching CSI provisions in a trade agreement with the EU.

This pattern is confirmed when looking into the clusters individually. This is especially the case for the cluster on participants' independence. The clusters dealing with the scope of the membership, the interaction and dispute settlement mechanism also confirm the domestic resonance explanation, however they reveal two special cases. The agreement with Korea shows a light deviation, as the CSI in the agreement is slightly higher than the civil society participation witnessed in the country. A second, and more apparent, deviation from this domestic resonance expectation is the EU-Vietnam trade agreement. Scoring extremely low on civil society participation, Vietnam nevertheless belongs to the intermediate CSI category. Several explanations for this remarkable finding can be advanced, such as the EU experience and EU-third country power relations, which have been elaborated above. Besides, a relatively high CSI score for the EU-Vietnam agreement is coherent with the EU's broader normative and developmental policy goals towards Vietnam. In several documents the EU has identified the lack of independent civil society as a problematic issue to be addressed through aid programmes (European Commission, 2014; Hoang, 2015).

Conclusion

This paper aimed to shed light on a new phenomenon in the most recent generation of EU trade agreements, namely civil society involvement in the context of sustainable development. We aimed to explain varying degrees of civil society involvement in 10 EU agreements by systematically analysing five plausible explanations (i.e. EU experience, EU protectionism, EU norms, EU-third country trade power relations, and third country resonance). We found that, while none of the explanations can fully and exclusively account for CSI variation, the third country domestic resonance explanation, which takes into account the degree of civil society participation in domestic policy making, turns out to be most powerful. In other words, the more civil society is already involved in the domestic political system of a partner country, the more ambitious civil society provisions in the EU trade agreement will be.

Moreover, the more detailed study of the clusters showed that time also matters: first, an increase in civil society interaction with governmental actors can be observed, and second, civil society provisions in the recent agreement with Vietnam are more ambitious than would be expected from the domestic context because of learning from the implementation of existing agreements. These insights corroborate the EU experience explanation to some extent. In contrast, we could not find consistent patterns supporting the protectionist, normative, and power based explanations.

These findings resonate with literature calling for the examination of foreign policy from the perspective of the country to which the policy is targeted (Keuleers et al., 2016). They also contribute to broader literature on EU external democracy promotion that acknowledges internal democratic structures of partner countries to be influential in joint cooperation, both in the EU neighbourhood (Van Hüllen, 2012) and beyond (Simm et al., 1999).

Even though we did not find relational patterns in combinations of the different explanations, further research into the way explanations can interact is all the more relevant as the EU is currently (re-)negotiating trade agreements with a variety of partner states, such as Chile, Mexico, MERCOSUR and Tunisia. Further research could analyse additional factors such as bargaining tactics during the negotiations, or the partner country's involvement in other trade agreements that opens the door to civil society involvement (e.g. Vietnam's TTP or Central America's CAFTA-DR). Finally, future research should address the implementation of civil society provisions in EU trade agreements, focusing on varying CSI in practice.

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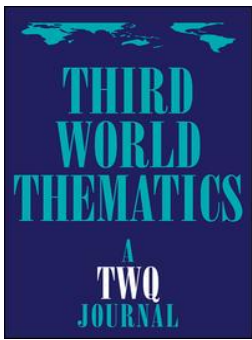
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Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements

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ABSTRACT

This study critically reflects on the involvement of civil society actors in the sustainable development chapters of recent EU trade agreements. It discusses how civil society mechanisms may legitimise the underlying neoliberal orientation of the agreements through co-optation of critical actors. Starting from a critical perspective and drawing on evidence from innovative survey data, qualitative interviews and participatory observations, it concludes that, despite overall criticism, there is no clear evidence of co-optation. While being aware of the risks their participation entail, EU participants take a constructive position. Nevertheless, diverging perspectives between non-profit and business actors risk reinforcing existing power asymmetries.

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Introduction

In response to growing concerns and contestation about the sustainable development implications of free trade agreements, the European Union (EU) has included a sustainable development (SD) chapter in its recent trade agreements. This chapter typically creates institutionalised mechanisms for civil society participation. These civil society mechanisms aim to discuss and monitor the sustainable development dimension of the trade agreement. It has been argued that they constitute an original and distinctively European approach to promoting labour rights, environmental principles and economic development through trade. Each of the trading partners organises its own domestic mechanisms, which then meet annually in the transnational mechanism. The number of mechanisms is likely to increase dramatically in the coming years and decades, given the growing volume of trade agreements being concluded.

While very little is known about the functioning and relevance of these mechanisms, some criticism has already been voiced by civil society actors, academics, Members of the European Parliament and the European Economic and Social Committee (EESC).¹ Most call for institutional improvements, such as more efficient management, more representative composition of the participants, better feedback mechanisms with the governments and

budgetary support for travel and practical organisation. Some of these shortcomings have been (partly) acknowledged by EU officials.²

The above-mentioned shortcomings all have in common that they are compatible with the dominant neoliberal paradigm that free trade contributes to sustainable development and that civil society mechanisms ought to play a role in this process. Instead of these institutional shortcomings, and in line with the general objective of this collection, we aim in this article to explore a much-needed fundamental critique of how the civil society mechanisms may contribute to legitimising the underlying free trade orientation of the agreement. In particular, with the deadlock of the World Trade Organization (WTO) Doha Round and the increasing importance of bilateral and regional trade agreements, it is important to critically reflect on the opportunities and limits of civil society mechanisms in (European) trade agreements as well as on their potential incorporation into a neoliberal paradigm.³ This tension between resisting free trade agreements for their (alleged) adverse impact on sustainable development, on the one hand, and using the agreements' mechanisms for the purpose of improving sustainable development or at least preventing harmful consequences, on the other, will be situated theoretically and illustrated empirically in this study.

Thus, our critical evaluation involves both a theoretical and an empirical dimension. Theoretically, we discuss how and why the involvement of civil society in international trade agreements may be problematical. Specifically, we point to the danger of co-optation, whereby critical voices are being silenced and induced to be more constructive. This entails the 'insider-outsider dilemma' for civil society organisations: should they reform the system 'from within' by participating in the mechanisms established by the agreement, knowing that this may equally serve to legitimise the entire free trade agreement?

Empirically, we examine the experiences of the European members of the civil society mechanisms. Evidence comes from an innovative survey (conducted in August and September 2016) with EU business, labour, environmental and other representatives participating in the civil society mechanisms established in the EU trade agreements.⁴ In addition to the survey, we draw on 15 qualitative interviews conducted in Brussels, Colombia, Costa Rica, Honduras and Peru with civil society actors participating in civil society mechanisms, as well as participatory observation in the EU-Colombia-Peru and EU-Central America domestic and transnational civil society meetings held in 2015 and 2016.

Whereas both the theoretical and the empirical parts focus on the civil society mechanisms and how these may serve to legitimise the free trade agreements, they are embedded within a broader critical analysis of the trade-sustainable development nexus. As such, three critical questions recur in the theoretical and empirical parts: the impact of (EU) free trade agreements on sustainable development, the relevance of the sustainable development chapters in EU agreements and most importantly the role of the civil society mechanisms in this regard.

Our data reveal the insider-outsider dilemma that European civil society members, especially those from labour and other non-profit organisations, are facing through their involvement in the mechanisms. While these organisations hold (very) critical views on the impact of (EU) free trade agreements on sustainable development, they also actively participate in the mechanisms *and* acknowledge the pitfalls of co-optation. The position of business representatives is more straightforward: they hold more positive evaluations across the board, both on the benefits of free trade and the role of the civil society mechanisms (business representatives even recognise their potential to legitimise free trade).

The article is structured as follows. First, we provide an overview of the mechanisms and their rationale. Second, we draw from several strands of the critical studies literature to situate the possibly problematic role of civil society mechanisms in EU trade agreements. Third, we address the same issue based on empirical findings from the survey and interviews. Finally, we formulate provisional conclusions and questions for further research.

Institutional criticisms

The establishment of civil society mechanisms in the context of EU trade agreements is a recent phenomenon. The first EU trade agreement to create a separate mechanism involving civil society was the EU-CARIFORUM Economic Partnership Agreement (EPA), which was concluded in 2008. This agreement includes commitments on labour and environmental standards and sets up a transnational civil society mechanism, known as the Consultative Committee. The new generation of EU trade agreements, launched by the 'Global Europe' strategy,⁵ of which the EU-Korea agreement was the first in 2011.⁶ Three changes were carried through in these new generation agreements: first, labour and environment provisions were grouped in a separate SD chapter; second, in addition to a transnational mechanism, each agreement establishes domestic civil society mechanisms; third, the legal provisions concerning the set-up of these mechanisms are elaborated in more detail.

Even though there is some variation in the legal texts, the civil society mechanisms created in the new generation of EU trade agreements are characterised by three recurrent features. First, a domestic civil society mechanism is set up in which representatives of three constituencies (labour, environment and business) of each Party (the EU and its trading partner(s)) participate. This is often called the Domestic Advisory Group (DAG). Second, a transnational civil society mechanism is created where the members of the domestic mechanisms and/or other actors from both the EU and its trading partner(s) meet annually. Third, there is some interaction between these two mechanisms and the intergovernmental body (comprising officials of the EU and its trading partner(s)). This body meets annually to discuss the implementation of the SD chapter.

Currently, civil society mechanisms have been activated in the framework of the agreements with Korea, Peru-Colombia, Central America, Moldova, Georgia and the CARIFORUM states.⁷ Although the mechanisms are a relatively new phenomenon, several aspects have already been criticised by a variety of actors. A first cluster of criticism concerns the organisation of the mechanisms, which are viewed as too improvised.⁸ It has also been suggested that the domestic mechanisms should convene more frequently, for instance through videoconferencing, to ensure substantial progress and continuity.⁹ Another avenue recommended to ensure continuity and better organisation is creating a coordinating mechanism such as a secretariat.¹⁰ Whereas the EESC fulfils this role for the EU DAGs, there is no equivalent body for the EU's trade partners.¹¹ This limited secretarial support reflects a general lack of budgetary resources for the organisation of the mechanisms.¹²

A second area of criticism concerns the composition of the mechanisms, and more specifically the selection procedures. Although there are no indications that the European Commission deliberately excludes critical voices, the selection procedures are not transparent. This is all the more so in the EU's partner countries, where representatives are not always independent from the government, for example in Peru, Colombia and Honduras.¹³ Furthermore, there is a lack of awareness of the existence and role of these mechanisms,

affecting the level of civil society participation.¹⁴ The lack of financial resources also has a significant impact on some civil society actors' opportunities to attend meetings.¹⁵

A third criticism relates to the accountability of governments. It is often unclear whether and how governments follow up on the outcomes of these mechanisms. If participants feel that their views are not taken into account, this may lower their satisfaction and lead to 'consultation fatigue', which risks undermining the efforts invested in the civil society mechanisms.¹⁶ Moreover, it is not always clear whether domestic mechanisms in third countries are operational and effective.¹⁷

All of these criticisms refer to flaws in the functioning of the mechanisms and concentrate on institutional improvements. As such, they do not fundamentally question the underlying assumptions that free trade contributes to sustainable development and that civil society mechanisms can be instrumental for this purpose. In the remainder of this article, we aim to go beyond institutional criticisms and critically analyse how the mechanisms may legitimate free trade by reducing civil society opposition through co-optation. The next parts will attempt to address this question from a theoretical and an empirical perspective.

Critical reflections

In order to provide a more profound critique, this part will draw from several theoretical strands in academic literature and situate the potentially problematic role of civil society mechanisms within broader critiques of the free trade – sustainable development nexus.

Free trade and sustainable development

Even though there is no consensus on the impact of economic globalisation on sustainable development,¹⁸ there are concerns that free trade can have detrimental consequences for labour and environmental conditions. Liberalisation can lead to a race-to-the-bottom as countries and firms are tempted to engage in social dumping in order to increase their competitiveness.¹⁹ Likewise, it can create incentives for industry to produce in an ecologically unsustainable manner in order to reduce production costs.²⁰

Moreover, a conventional preoccupation with liberalisation largely assesses immediate economic benefits of enhanced market access while neglecting longer-term costs such as reduced regulatory policy autonomy.²¹ In fact, several authors evaluate the prevailing global trade governance as ultra-restrictive on policy space and as having a negative impact, especially on developing countries.²² Bilateral free trade agreements, even more than the multi-lateral WTO rules, may limit governments' scope to adopt measures aimed at enhancing social policy or increasing environmental protection.²³

Although EU leaders assume that free trade brings economic growth, which can reduce social injustice and environmental degradation and mitigate other crises,²⁴ it is still unclear whether the EU is actually able to 'square current neo-liberal trade policy with the preservation of ecological and social diversity'.²⁵ Such doubts are based on the observation that EU trade policy-making features unequal power relations in which corporate interests dominate at the expense of social and environmental voices.²⁶ Accordingly, EU free trade is at risk of fulfilling neoliberal demands while leaving sustainable development aspects behind. The EU's free trade agenda has been particularly criticised in relation to the EPAs with the African, Caribbean and Pacific group of countries. Reviewing a number of studies on the

'dangers of premature liberalisation' and the limits to policy space as a result of these agreements in West Africa, Langan and Price point out that the neoliberal trade agenda is also subscribed to by African elites.²⁷ The EU's neoliberal trade agenda has been further radicalised since the 2006 Global Europe trade strategy, which launched a range of bilateral free trade agreements with Asian and Latin American countries,²⁸ and more recently the negotiations with Canada, Japan and the US. While earlier critiques concerned the impact of the EU's free trade agreements within developing countries,²⁹ the protests against the EU-US Transatlantic Trade and Investment Partnership (TTIP) have sparked growing concerns about policy space for sustainable development objectives within the EU.³⁰

In order to mitigate the potentially negative effects of trade agreements on sustainable development, the European Commission added a chapter on environment and social aspects in the EU-CARIFORUM EPA and has included a SD chapter in its bilateral trade agreements since the agreement with Korea (see *supra*). The growing discursive attention to sustainable development is also illustrated by the 2015 'Trade for all' strategy. Here, it is emphasised that '[t]he EU has been leading in integrating sustainable development objectives into trade policy and making trade an effective tool to promote sustainable development worldwide.'³¹

Nevertheless, it seems the SD chapters in EU trade agreements do not go far enough in ensuring that free trade does not hamper sustainable development, let alone contribute to it. To start, they have been criticised on the grounds that their purposes are too vague³² and for being designed in such a 'soft' way that they are, for example, not able to deal adequately with labour violations.³³ The European Commission claims that this reflects its cooperative approach in dealing with labour and environmental issues. A DG Trade official formerly in charge of sustainable development argued that the EU's goal is to deal with the root causes of violations of labour rights rather than with the symptoms, as the US does by having a binding dispute settlement system for labour violations.³⁴ Furthermore, these provisions are designed in a conservative and flexible way: conservative because there are no specific requirements for modifications to domestic law, as long as core labour rights are not systematically violated and softening of domestic labour laws does not have an impact on trade and investment; and flexible because they leave ample discretion for the governments as regards implementation of the labour protection commitments at the domestic level and the functioning of the civil society mechanisms.³⁵ This is in sharp contrast to economic concessions, which are generally formulated in a much more binding and precise way.

From a more negative stance, one could even argue that the chapter is only included to ensure support for the free trade agreement, a practice that can be observed in other parts of the world. By way of illustration, during negotiations on the North American Agreement on Labor Cooperation, a side agreement to the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico, in 1993, voices from labour expressing reservations towards the NAFTA became more silent.³⁶ Similarly, the North American Agreement on Environmental Cooperation, NAFTA's other side agreement concluded in 1993, helped to mobilise support for the NAFTA from environmental groups.³⁷ In the same vein, van Roozendaal³⁸ argues that in the case of the EU-Korea agreement, the inclusion of labour standards could be regarded 'as a symbolic act to increase the support for free trade agreements without expectations that they would be effective'. This critical perspective might also hold true for other agreements concluded by the EU. Given the increasing contestation of EU trade policy and the growing power of the European Parliament in this area, the inclusion of SD chapters has become all the more important in order to guarantee public and political support for trade agreements.

Civil society participation

Adding a sustainable development dimension to EU trade agreements is not always enough to legitimise these intergovernmental accords. In fact, a political institution can be questioned per se by the broader public as political support for an institution is not predetermined but has to be granted. Allowing participatory practices can be a way of obtaining support for a system.³⁹ At the same time, however, they entail risks for those participating.⁴⁰ More precisely, participation can be either transitive or intransitive, moral, amoral, or immoral, free or forced and spontaneous or manipulative. In essence, whereas transitive forms of participation are oriented towards a specific goal, intransitive forms are reduced to a partaking process without any predefined purpose. Moreover, participation can pursue ethically or unethically defined goals. Free participation, furthermore, can be distinguished from a form of participating in which people are asked or pushed into partaking in operations which are not of interest to them, purely for the sake of participation.⁴¹

This manifestation of participation can also be understood as ‘co-optation’, which, in the context of policy-making, describes a process where states aim to divert the goals or demands of civil society (groups) to serve different, less transformative agendas. It can, furthermore, characterise a process by which civil society (groups) are co-opted into working ‘from within’ and thus cooperate with state actors to pursue certain goals.⁴² Finally, in contrast to spontaneous participation, in manipulated forms of participation participants do not feel they are forced into doing something, but are led to actions which are inspired or directed by manifestations of power outside their control.⁴³ This last dimension is in line with the Foucauldian notion of governmentality, which assumes a form of power which, while outside the sphere of formalised and centralised power structures, nevertheless enables control to be exerted over society.⁴⁴ Accordingly, and even somewhat counter-intuitive to its rhetoric of empowerment, participation leaves room for fundamental criticism. In this regard, Cooke and Kothari⁴⁵ speak of participation’s ‘tyrannical potential’, which is manifested in the illegitimate or unjust use of power through inclusive practices.

In light of these potentially negative effects of participation, three kinds of reactions to invitations for participation can be distinguished: inside, outside and inside-outside responses. Whereas the first type describes a strategy to defend vested interests from within by critically participating in certain initiatives, the outside response is characterised by actors’ decision to ‘opt out’; this means engagement outside the forum in order to build alternatives. The inside-outside response can be described as an oscillation between the two positions, comprising simultaneous or sequential engagement from within and protest from the outside.⁴⁶

Given these alternatives with their respective advantages and disadvantages, actors find themselves in a dilemma. This insider-outsider dilemma surrounding participatory practices is of particular relevance for civil society actors. From a Gramscian point of view, civil society can be seen as a sphere which either stabilises and reinforces or transforms governmental hegemony.⁴⁷ As extant literature illustrates, the involvement of civil society can help to improve the democratic legitimacy of global governance in general⁴⁸ and EU trade policy in particular.⁴⁹ Accordingly, participation by civil society actors entails the same risks as outlined above. In the context of trade liberalisation, the peril of being co-opted might be particularly imminent for non-profit actors such as environmental, human and labour rights groups as they are, in contrast to business, traditionally more critical towards the neoliberal

agenda.⁵⁰ Apart from that, it is more difficult for non-governmental organisations (NGOs) than for firms to defend their interests due to limited resources in terms of personnel and funding.⁵¹

The case of the WTO demonstrates a form of civil society participation which can be described as co-optation. In fact, the transformative potential of global civil society such as NGOs has been 'taken in' by the multilateral trade institution and its dynamics. In essence, civil society engagement against the WTO's neoliberal agenda from within the WTO has not resulted in alternative discourses and perspectives in debates and deliberation. Instead, civil society actors have themselves adopted technocratic and neoliberal forms of advocacy over the years.⁵²

Inhibiting the potential of civil society for purposes of a neoliberal nature might also be a strategy applied by the EU. With the inclusion of critical civil society actors in a trade instrument, the democratic legitimacy of this instrument is likely to increase. Put differently, reservations that civil society actors have towards EU trade agreements can be undermined by the possibility to participate in policy-making in the context of these agreements. Such an assertion is substantiated with regard to the new generation of EU trade agreements. The limited literature on this topic has indeed suggested that the civil society mechanisms are 'at risk of legitimising free trade deals'.⁵³ Creating support for the trade agreement and assuring its ratification has been referred to as the mechanisms' 'instrumental purpose'.⁵⁴

Co-optation is further manifested in the limited power given to civil society groups in the context of EU trade policy. At the EU level, despite the access that was granted to NGOs via the Civil Society Dialogue within DG Trade, these actors have not been able to influence trade policy outcomes in any real sense.⁵⁵ A similar picture is revealed in the context of civil society mechanisms in EU trade agreements: while EU domestic and transnational mechanisms convene in practice, participating civil society cannot articulate enforceable rules for the governments. As a recent study illustrates, '[i]nitial assessments from stakeholders indicate that participation is time-intensive but recommendations and provisions are non-enforceable'.⁵⁶ This limitation underlines the restricted role of civil society actors in relation to sustainable development in the context of EU trade agreements. In summary, a critical perspective suggests that providing civil society with a role in trade agreements, but at the same time restricting their influence in policy-making, may be a way of silencing potential criticism of neoliberal orientations.

This theoretical exploration will inform the empirical insights in the following part, which analyses the positions of the European members of the civil society mechanisms. Again, the critical evaluation of the civil society mechanisms will be related to broader questions on (EU) free trade agreements and the sustainable development chapters.

Empirical perspectives

Free trade and sustainable development

When asked about their opinions of the 'impact of free trade on sustainable development', labour representatives as well as other non-profit organisations such as environment, development, human and animal rights organisations' replies vary slightly from positive to extremely negative, but the main tendency is towards the negative (see Figure 1, Non-profit).⁵⁷

What is perhaps surprising is that non-profit organisations are only *moderately* negative on the consequences of free trade (see Figure 1) and EU trade agreements (see Figure 2) for sustainable development. The option 'extremely negative' was indicated only a few times, whereas more than one third of these representatives were neutral or even positive on the relevant questions. Non-profit organisations are neither unanimously nor radically negative about these issues. Despite tendencies towards the critical end of the spectrum, a significant minority assesses the impact of (EU) trade agreements positively and only a very small minority makes an extremely negative evaluation (see Figures 1 and 2).

This might lead to the conclusion that these civil society organisations have become less critical through their co-optation within EU mechanisms. If we consider the anti-TTIP and anti-CETA protests, which took place at the time when the survey was held (August-September 2016) and are remarkably strong both in terms of intensity (heavily anti-trade) and scope (proliferation of civil society organisations mobilising against these agreements), we might have expected a more outspokenly negative evaluation by labour, environmental, development, human rights and animal welfare organisations. In other words, non-profit organisations participating in the mechanisms seem generally less critical of free trade and EU trade agreements than most civil society organisations that are campaigning on trade issues. Nevertheless, it would be premature to conclude that this more positive inclination



Figure 1. Opinion on impact of free trade on sustainable development (in percentages; business n = 10, non-profit: n = 32).



Figure 2. Opinion on impact EU trade agreements on sustainable development (in percentages; business n = 10, non-profit: n = 32).

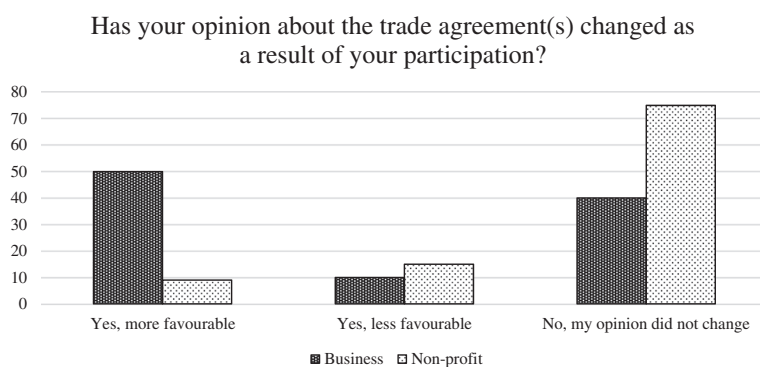


Figure 3. Changed opinions about the free trade agreement (in percentages; business $n = 10$, non-profit: $n = 32$).

of the participants in the civil society mechanisms is caused by co-optation. Our methodology does not make it possible to make a pre–post measurement (before/after participation) or to use a control group (non-participants). We did, however, ask the civil society participants whether participation in the mechanisms had changed their evaluation of the EU trade agreement. On this question, most non-profit organisations indicated that they had not changed their views (see Figure 3). There may also be a self-selection effect in that organisations that are radically against free trade agreements do not participate in the mechanisms because they are not willing to do so or because they have not been selected by the European Commission.

Importantly, further qualitative data suggest that civil society representatives are aware of the dangers of co-optation. Even respondents who are very critical of free trade and EU free trade agreements in general attempt to be actively involved in the mechanisms in order to make the best of the situation. Several interviewees from civil society acknowledge that their participation in the mechanisms may have the (in their eyes) perverse effect of legitimising the free trade agreement as a whole. As one respondent who is a member of an environmental organisation wrote:

‘It’s primarily a tool by the Commission to show that the EU is integrating environmental and social issues in trade agreements.’

Non-profit organisations seem to be clearly aware of the pitfalls as well as the opportunities that the civil society mechanisms offer and seem to be struggling with the ‘inside-outside dilemma’ that these pose for them. One NGO representative who has experience with several transnational and domestic civil society mechanisms formulated this as follows:

A cabaret artist portrays the EU as a kind of ‘humanist capitalist’: not shooting on people at the border but letting them drown in the sea; and feeling bad about it. So full of contradictions. Hence, yes, the CSD [civil society dialogue] can be seen as an attempt by the institutions to promote and improve sustainable development, BUT this is done under the premise of a trade liberalisation regime and framework which contradict sustainability goals. FTAs (free trade agreements) are an agenda of increasing competition, of resource exploitation, of false measurements (GDP, externalisation of costs), etc. that contradicts sustainability goals. In other words, sustainable development is equated with growth; that is why DG Trade can organise those kinds of CSDs and include sustainable development chapters. So they have appropriated and incorporated sustainability...

Furthermore, the same person argued that 'the core of the trade agreement has not changed just because there are consultative bodies [involving civil society] or DAGs set up; if there is any impact, it is limited [...]'. Another development NGO representative stated that he finds it important to negotiate on the conclusions of the meetings until the very last minute, even if he is very critical of the impact of free trade and EU trade agreements on policy space for sustainable development. From our observations of the EU-Peru-Colombia and EU-Central America mechanisms, some representatives of non-profit organisations attempt to use the mechanism to highlight shortcomings in third countries' compliance with labour, environmental and human rights standards. In so doing, they criticise the impact of the EU trade agreement in this regard, trying to get the most out of it. Others attend the civil society mechanisms, yet are more passively involved or work behind the scenes.

When discussing their role in the EU-Peru-Colombia DAG, one member from another development NGO illustrated the insider-outsider dilemma in very literal terms as follows:

Look where we are standing now... Before, we were shouting against the agreement on the streets; today, we are helping to implement it inside this building.⁵⁸

Two years earlier, another participant in these mechanisms had expressed it as follows:

You see, this is a governmental process and then we're asked to come in to basically defend these free trade agreements. Now many of us [...] have substantial conflicts and issues with the kind of free trade agreements and the economic agenda behind it. And for the Commission, for the government, this is a way to say we're smoothing the edges and we get civil society in there and they can help us to address the worst issues. But the fundamental drivers and the way we design trade relations remain contentious. At least for us, [...] it's a way to invite the protest on the street into the agreement.⁵⁹

One opponent of the EU-Central America trade agreement decided, after opposing the agreement as a whole, to join the civil society mechanisms because then at least they would still have a platform available to fight possible negative consequences of the agreement.⁶⁰ He too decided to participate in the civil society mechanisms, not in spite of but because of his opposition to it.

Civil society mechanisms

When considering the survey questions on participants' evaluation of the civil society mechanisms, a mixed picture emerges. When asked to rate their experience with the civil society mechanisms according to a number of statements ranging from 'strongly disagree' to 'strongly agree', non-profit organisations not only endorsed the critical statements but also (moderately) subscribed to the opportunities that the mechanisms offer. Three statements in the survey relate to the critical perspective: whether the civil society mechanisms are there 'to guarantee ratification of the agreement', 'to reduce opposition to the agreement' and 'to legitimise the agreement with the larger public'. Each of these statements relates to the possible function of the mechanisms as legitimising free trade instead of promoting sustainable development. Notwithstanding some exceptions, the large majority of respondents from non-profit organisations agree with these statements. Again, however, a constructive position emerges: only a slight minority 'strongly agrees', and overall evaluations are rather moderate (see Table 1).

More surprisingly, these rather negative evaluations go together with positive assessments of the mechanisms. Our data illustrate that these representatives recognise potential

Table 1. Business and non-profit evaluating the civil society mechanisms (in percentages; business n = 10, non-profit: n = 32).

The meetings that I attended are a mechanism to...																																	
		Reduce opposition to the agreement				Legitimise the agreement with the larger public				Guarantee ratification of the agreement				Build alliances with other civil society organisations				Have impact on decision-making				Discuss with officials				To present new ideas				Promote sustainable development			
		Business		Non-profit		Business		Non-profit		Business		Non-profit		Business		Non-profit		Business		Non-profit		Business		Non-profit		Business		Non-profit					
Strongly agree	0	6	0	6	10	6	16	10	6	0	6	0	6	0	3	10	3	0	0														
Agree	50	25	40	25	20	16	25	30	25	60	25	60	25	60	41	30	28	30	31														
Somewhat agree	10	31	30	28	20	22	38	30	41	20	41	10	31	20	34	30	38	30	38														
Neither agree nor disagree	40	19	30	19	40	25	13	20	9	10	9	20	16	30	19	30	13	30	13														
Somewhat disagree	0	3	0	9	10	6	6	0	6	10	6	10	9	0	9	10	6	10	6														
Disagree	0	9	0	13	0	19	3	10	9	0	9	0	0	10	6	0	9	0	9														
Strongly disagree	0	6	0	0	0	6	0	0	3	0	3	0	0	0	0	0	3	0	3														

benefits of the civil society mechanisms. Not only are non-profit organisations 'only' moderately critical about the mechanisms in terms of legitimising free trade, but they also accept that these can promote sustainable development, foster discussions on the topic and most of all contribute to building alliances with other organisations. Although these respondents are not overly enthusiastic about these functions, they do recognise their potential.

Also in the blank spaces that respondents could fill in, this 'critical but constructive' position of non-profit organisations becomes clear. While a few comments relate to the insider-outsider dilemma and the risk of legitimising free trade (see *supra*), most of them express frustrations with the practical functioning and impact of the mechanisms. Some refer to the mechanisms' limited dynamic and the absence of a real impact: As a representative of a non-profit development organisation participating in the EU-CARIFORUM Consultative Committee claims,

[t]here is not much life in between the meetings... They seem to be one-off events.

A similarly disillusioned opinion on the impact of civil society mechanisms is expressed by a labour representative member of several mechanisms:

The meetings are not working and do not amount to anything. But if we would leave, there would be a void and we can't do that.⁶¹

Along the same line, a member of a non-profit organisation participating in the EU-Central America transnational meeting and its EU DAG claims:

The meetings I attended are mostly to 'tick the box' on the mechanism of the agreement. They have been mostly processes where we focus more on the mechanism itself than on the content of discussions.

This is confirmed by a statement of a non-profit organisation member who participates in the EU-CARIFORUM Consultative Committee and the EU DAG of the EU-Colombia-Peru agreement:

Sometimes, the discussion is more about the governance of the groups and less about the implementation of the agreements. After the meeting, there is not really an agenda for joint activities for the members of the groups in order to strengthen the exchange and the cooperation among them to monitor the implementation of the agreements. Lack of funding makes it sometimes difficult for the members of the groups to attend the relevant meeting and also to have the human resources to follow in detail the implementation of the agreements.

A member of another non-profit organisation who has participated in the EU-CARIFORUM Consultative Committee several times describes its limitations as follows:

The mechanism in the CARIFORUM EPA has not really been very active; it is rather formal. As there is minimal interest on both the Caribbean and the European side in genuinely implementing this agreement, and there was very little private sector interest as well, there are few incentives to engage and therefore this civil society mechanism is not very active/effective as there is little to fight for or against.

Limited interest on both sides of the EPA is also observed by a business representative attending the EU-CARIFORUM Consultative Committee:

The follow-up to the meetings is slow and there are no concrete outcomes. There is a lack of interest from the EU side and too high expectations from the Cariforum side.

As already touched upon in the previous two quotes, there are also concerns about the limited accountability of the governments. Limited interaction between civil society members and the Parties to the agreement is further substantiated in the following quotes:

I have always found that the Sustainable Development Committee members (i.e. the intergovernmental body members) are reluctant to engage in a real discussion with DAG members and civil society during joint meetings. Sometimes they do not even accept having a dialogue with DAG members.

Like his labour counterpart, an environmental organisation representative to the EU DAG of the EU-Korea agreement emphasises the European Commission's passive role:

The EU Korea DAG allows business, labour and civil society to express their views on certain environmental and labour issues related to trade. That is really all it is. The Commission attends, listens and does nothing.

In addition, there are comments on the representativeness of the mechanisms, especially on the limited presence of trade unions. To illustrate, a member of a non-profit organisation who has experience with five types of EU trade agreements' civil society forums notes the following:

The key problem is lack of full involvement of all sectors of civil society (NGOs, trade unions), particularly in the EU trading partners' DAGs. Employers' federations are always represented.

A labour representative who attends several EU DAGs puts it as follows:

The EU-Korea DAG is the most advanced one (even though problems of representation in the composition of the Korea DAG persist). The composition of the Central America DAG is still not defined and there is a lack of representation of trade unions in Central American countries.

Thus, the bulk of these comments concern criticism within the system, in line with the 'inside response' (see *supra*). This confirms once more that civil society participants have not given up on the possibilities that the civil society mechanisms are offering, and that they are intent on improving these mechanisms. However, as also stated above, this does not mean that these participants are not aware of the potentially legitimising effect of their participation in the mechanisms. Therefore, here too it is difficult to conclude that co-optation has taken place.

The perspectives of the business sector representatives deserve special mention as they diverge from those of the representatives of non-profit organisations. In essence, business groups are generally (very) positive about free trade, the EU trade agreement and the civil society mechanisms. Compared to the non-profit organisations, they are more positive about the impact of free trade on sustainable development (see Figure 1). Although they evaluate the impact of EU agreements slightly less favourably than the impact of free trade in general, a divergence with the other representatives continues to exist. This may not be surprising since it reveals a traditional socio-economic cleavage in European politics between labour and capital on the benefits of free trade.⁶²

More surprisingly, business representatives also tend to evaluate the civil society mechanisms in terms of legitimising the free trade agreement. They largely agree with those statements that we considered to endorse the critical perspective, i.e. that the mechanisms serve 'to guarantee ratification of the agreement', 'to reduce opposition to the agreement' and 'to legitimise the agreement with the larger public'. As such, the polarisation between business and the other participants on the merits of free trade for sustainable development disappears when it comes to recognising the broader liberal agenda behind the mechanisms.

However, one may assume that the motivations behind these assessments are different, in line with the above-mentioned divergent assessments of the impact of free trade and EU trade agreements on sustainable development. While business representatives are more

Table 2. Business and labour evaluating the civil society mechanisms (in percentages; business n = 10, non-profit: n = 32).

	The meetings that I attended are a mechanism to...							
	Have an impact on decision-making		Discuss with officials		Criticise the sustainable development dimension of the agreement		Promote sustainable development	
	Business	Labour	Business	Labour	Business	Labour	Business	Labour
Strongly agree	0	13	0	13	0	25	0	0
Agree	60	13	60	38	0	25	30	13
Somewhat agree	20	38	10	50	20	25	30	50
Neither agree nor disagree	10	0	20	0	60	13	30	0
Somewhat disagree	10	13	10	0	10	0	10	13
Disagree	0	25	0	0	10	13	0	25
Strongly disagree	0	0	0	0	0	0	0	0

likely to support the mechanisms' legitimising role as necessary to guarantee the more important objectives of the trade agreement, non-profit organisations tend to view the legitimising function from a more critical perspective and are warier about co-optation, as illustrated above.

At the same time, business groups recognise the more 'mainstream' or 'free trade oriented' purposes of the mechanisms. The respondents (moderately) agree on all the statements that point to purposes and criticisms 'within the system'. However, a closer look at the data reveals subtle differences between business and labour representatives (see Table 2). For instance, the former agree more than the latter on the mechanisms' function 'to have an impact on decision-making' and 'to discuss with officials'. Business groups are also much less convinced than their labour counterparts that the mechanisms serve 'to criticise the sustainable development dimension of the agreement'. Business is also much more optimistic than labour about the mechanisms' aim 'to promote sustainable development'.

In sum, the survey data suggest that business groups recognise that the mechanisms play a role in legitimising the EU trade agreements while at the same time providing opportunities to discuss with officials and impacting on decision-making. This more positive evaluation of the civil society mechanisms is in line with their more optimistic assessment of the benefits of free trade for sustainable development in general. It also resonates with the different responses of business and non-profit organisations to the question 'Has your opinion about the trade agreement(s) changed as a result of your participation in the meeting(s)?' As can be seen from Figure 3, while most respondents indicate that their opinion has not changed, a majority of business representatives indicate that their opinion of the trade agreement has become more favourable.

Conclusion

This study aimed to critically reflect on a recent phenomenon in EU trade policy, namely the involvement of civil society actors in the EU's trade-sustainable development nexus. More precisely, it discussed how transnational and domestic civil society mechanisms provided for in the new generation of EU trade agreements may be a way to legitimise the underlying neoliberal orientation of the agreements. Starting from critical perspectives and drawing

on evidence from a survey, qualitative interviews and participatory observations, we arrive at the balanced conclusion that non-profit civil society actors recognise the pitfalls of participatory practices in EU agreements, but also see the opportunities that they may offer for the promotion of sustainable development.

Therefore, we conclude that the approach adopted by non-profit actors has been constructive. Rather critical views on the impact of free trade and EU trade agreements on sustainable development have not prevented them from participating in the mechanisms; at the same time, rather critical evaluations of the purposes of the mechanisms have not withheld them from acknowledging the opportunities to discuss and monitor sustainable development. In short, both the vices and virtues are recognised. However, it is too early to evaluate whether this constructive position also entails co-optation. The non-profit actors involved seem clearly aware that they are walking a tightrope between legitimising free trade and obtaining results for the cause they represent.

Moreover, non-profit organisations, and particularly labour representatives, are rather critical about the civil society mechanisms. The large majority indicate that they have not become more favourable towards the trade agreement. In addition to criticisms concerning the institutional dimension of the meetings (e.g. financial support and representativeness), they also point to frustrations with limited impact and lack of substantive dialogue. In the absence of tangible progress, these actors' critical but constructive position may modify into a more radical rejection of the trade agreement. Instead of co-optation, one might equally expect a radicalisation of the positions on free trade and the EU agreements, especially if existing frustrations are not seriously addressed.

While not providing clear evidence of co-optation, the findings did reveal another critical issue, namely the discrepancy between business groups and non-profit organisations. Business representatives evaluate the civil society mechanisms more positively. For instance, they recognise the value of the mechanisms in terms of networking with officials and having an impact. Several business representatives also indicate that they have become more favourable towards the trade agreement since their participation. Therefore, there is a risk that the civil society mechanisms further reinforce the existing asymmetric power relationship between business and non-profit organisations when it comes to trade policy influence⁶³, rather than balancing them in favour of sustainable development.

This study contributes to extant literature which critiques EU trade governance⁶⁴ and assesses the transformative power of civil society actors in the context of international trade⁶⁵ by collating the perspectives of the civil society actors participating in the civil society mechanisms established in recent EU trade agreements. While it partly reveals fundamental criticism of these mechanisms, it would probably go too far to describe them as a form of 'tyranny'; as suggested by Cooke and Kothari⁶⁶ on participatory approaches in development policy. Nevertheless, they may certainly be regarded as a double-edged sword in the sense that they may well entail co-optation in the longer run. The decision of critical groups to participate in EU civil society mechanisms undermines the power of their peers who have deliberately decided to stay outside the system in order to challenge it. What is more, 'empty' engagement from within runs the risk of fragmenting a constituency as the 'outsiders' might feel betrayed by the 'insiders'. Therefore, civil society actors are well advised to jointly reflect on potential negative effects that participation in civil society mechanisms might have on their constituency as a whole.

In order to better understand reservations about civil society mechanisms in EU trade agreements, future research would need to assess the rationales of those civil society groups and actors who decide to stay outside. It would also be of interest to investigate the perceptions of civil society on the other side of the agreements. Given the countries' different cultural and political heritages and, to some extent, the lack of experience with social and civil society dialogues, such an assessment is necessary to obtain a complete picture of the potential and limits of the civil society mechanisms in EU agreements.

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Notes

1. EESC, *Briefing Note to the Attention of Mr. Dumitru Fornea*; Montoute, "Civil Society Participation in EPA Implementation"; Van den Putte et al., "What Social Face of the New EU Trade Agreements?"; Altintzis, "Civil Society Engagement and Linkages"; and Harrison et al., "Labour Standards in EU Free Trade Agreements."
2. Personal interview EU officials, 15 April 2015 and 4 August 2016.
3. Hopewell, "Multilateral Trade Governance," 37.
4. It comprised close-ended questions about the opportunities and limits of civil society mechanisms and blank spaces for comments. Out of the 126 listed participants, not all of whom participate effectively, 42 completed the survey, generating a response rate of almost 50% of effective participants in the mechanisms.
5. European Commission, *Global Europe*.
6. The EPAs with the West African States (ECOWAS) and the East African Community (EAC), which are awaiting approval at the time of writing, include very similar provisions to those pertaining to CARIFORUM. Interestingly, the EPA concluded between the EU and the Southern African Development Community (SADC), approved by the European Parliament in 2016, does not refer to any civil society involvement whatsoever.
7. In the near future, such mechanisms will also be created for the agreement with Ukraine. The number of civil society mechanisms is likely to increase exponentially, as some trade agreements have yet to enter into force, e.g. with Ecuador, Singapore, Vietnam, Canada, ECOWAS and EAC; some are still being negotiated (e.g. with the US, Japan, India and the Philippines); and some will be updated (Mexico, Tunisia) or (re)launched (e.g. Mercosur, Indonesia) in the near future.
8. Orbie et al., *Civil Society Meetings*.
9. Van den Putte et al., "What Social Face of the New EU Trade Agreements?"
10. Montoute, "Civil Society Participation in EPA Implementation."
11. EESC, *Briefing Note to the Attention of Mr. Dumitru Fornea*; and see note 8 above.

12. Harrison et al., "Labour Standards in EU Free Trade Agreements."
13. Altintzis, "Civil Society Engagement and Linkages"; and EESC, *Briefing of the EESC Secretariat*.
14. See note 11 above.
15. See note 10 and 11 above.
16. Muguruza, "Civil Society and Trade Diplomacy."
17. Orbie and Van den Putte, "Labour Rights in Peru."
18. Mosley, "Globalisation and the State."
19. Brown et al., "International Labour Standards and Trade."
20. Paul, "Cost of Free Trade"; and Porter, "Trade Competition and Pollution Standards."
21. Heron, Asymmetric Bargaining and Development Trade-offs," 336.
22. Chang, *Kicking Away the Ladder*; Chang, "Policy Space in Historical Perspective"; Dicaprio and Gallagher, "Shrinking of Development Space"; and Rodrik, "Save Globalisation from Cheerleaders."
23. De Ville et al., *TTIP and Labour Standards*; Rodrik, *The Globalization Paradox*; Shalden, "Development for Market Access"; and UNCTAD, *Trade and Development Report 2014*.
24. European Commission, *Commission Staff Working Document; Europe 2020*; and *Trade for all*.
25. Ford, "EU Trade Governance and Policy," 580.
26. See also Dür and De Bièvre, "Inclusion Without Influence?"
27. Langan and Price, "Extraversion and the West African EPA."
28. Holden, "Neo-liberalism by Default?"
29. Del Felice, "Power in Discursive Practices."
30. De Ville and Siles-Brügge, *The Truth About TTIP*.
31. European Commission, *Trade for all*, 22.
32. See note 12 above.
33. Adriaensen and González-Garibay, "The Illusion of Choice"; and Vogt, "Arrangements and Labor Rights."
34. Hencsey in Van den Putte, "Transcripts Social Face Trade," 10.
35. See note 17 above, 18.
36. Finbow, *Limits of Regionalism*, 54.
37. Allen, "The North American Agreement on Environmental Cooperation," 127–8.
38. van Roozendaal, "Labour Standards as an 'Afterthought,'" 12.
39. Kröger, *Europeanised or European?*
40. Luhmann, *Legitimation Durch Verfahren*, 151–3.
41. Rahnema, "Participation," 116.
42. See also Jaffee, "Weak Coffee: Certification," 270.
43. See note 41 above.
44. See also Kurki, "Governmentality and EU Democracy Promotion."
45. Cooke and Kothari, *Participation: The New Tyranny*.
46. See note 42 above, 279–81.
47. Cox, "Civil Society Turn of the Millennium," 4–5.
48. Scholte, "Civil Society and Global Governance."
49. Meunier, "Trade Policy and Political Legitimacy."
50. see also note 44 above.
51. See note 26 above, 86.
52. See note 3 above, 37.
53. Ulmer, "Trade Embedded Development Models," 319.
54. See note 8 above, 26.
55. Coffey, *Evaluation DG Trade CSD*; Slob and Smakman, *A Voice, Not a Vote* and see note 26 above.
56. See note 53 above, 318.
57. When participants are asked about the impact of EU trade agreements in general and of the specific agreement in which they have been involved, the same moderately critical tendency emerges.
58. Personal interview participant EU DAG of the EU Peru-Colombia agreement, 7 April 2016.
59. Personal interview European NGO, 19 June 2014.

60. Personal interview European NGO, 1 March 2016.
61. Personal interview European labour representative, 6 December 2016.
62. Burgoon, "European Union's 'Fair Trade,'" 647.
63. See note 26 above.
64. See note 25 above.
65. See note 3 above.
66. See note 45 above.

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**Article 6: Trade unions in multi-stakeholder initiatives:
what shapes their participation?**

by Deborah Martens, Annelien Gansemans, Jan Orbie, Marijke D'Haese

Article

Trade Unions in Multi-Stakeholder Initiatives: What Shapes Their Participation?

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Abstract: There is a growing concern about the extent to which multi-stakeholder initiatives (MSIs), designed to improve social and environmental sustainability in global supply chains, give a meaningful voice to less powerful stakeholders. Trade unions are one particular civil society group whose participation in MSIs has received little scholarly attention so far. The objective of this paper is to examine the determinants that enable and constrain trade union participation in MSIs. Based on interviews, focus groups, observations and document analysis we determine local trade union participation in three MSIs, operating at company, national and transnational level respectively, in the Costa Rican pineapple industry. To explain the limited encountered trade union participation, an analytical framework is developed combining structural and agency dimensions, namely the MSI design and trade union’s power resources. The findings show shortcomings in the representativeness, procedural fairness and consensual orientation in the design and implementation of the MSIs. These are, however, not sufficient to explain weak trade union participation as trade union power resources also have an influence. Strong network embeddedness and improved infrastructural resources had a positive effect, whereas the lack of internal solidarity and unfavourable narrative resources constrained the unions’ participation.

Keywords: multi-stakeholder initiatives; participation; trade unions; power resources; Costa Rica; pineapple

1. Introduction

Multi-stakeholder initiatives (MSIs) aiming at improving environmental and social sustainability are omnipresent throughout different supply chains, from the Roundtable on Sustainable Palm Oil to the Alliance for Bangladesh Worker Safety in textiles. This form of governance is supposed to have greater legitimacy because they involve a diversity of stakeholders, including civil society, public and private actors [1–4]. Most research on MSIs has examined their functioning and legitimacy [5–7], whereas only few studies assessed the participatory aspects of MSIs [8–10]. Although MSIs aim to be inclusive and to reach the deliberative ideal where arguments overcome power dynamics, there is a considerable risk that existing power asymmetries are reproduced and that only powerful actors determine the course of action [11]. This point of critique has been raised in several studies concluding that the voices of less powerful actors, such as small farmers or local communities, are often not heard in MSIs [1,12].

Trade unions, independent workers’ organisations established through the principles of Freedom of Association (see ILO Convention No. 87 (1948)), are one particular civil society group whose involvement in MSIs received little scholarly attention so far. They are, however, relevant and legitimate participants when social concerns, especially labour rights issues, are considered in the initiatives.

Studies have demonstrated that certain procedures and mechanisms of MSIs can allow for more equal participation of all actors, in particular those that are traditionally less powerful [7,13,14]. For example, an impartial facilitator who keeps dominant participants in check, encourages less vocal actors to share their opinion and maintains positive group dynamics [15]. Other participatory procedures include setting clear goals and rules, providing access to information, working in small groups to build trust, using adequate materials adapted to the educational level and cultural background of (illiterate) participants, developing the technical capability of participants to meaningfully engage in the process, covering costs of participation and conducting stakeholder analysis to identify those relevant to the decision making process concerned.

The objective of this paper is to assess trade union participation in MSIs and explain the factors that enable and constrain their participation. Our contribution lies in a combination of two explanatory factors. First, the design and implementation of MSIs is analysed allowing an assessment of their deliberative potential. Second, the power resources of the relevant trade unions are described as they clarify the capacity trade unions have to participate in an MSI. By combining the importance of structure (i.e., MSI design) and agency (i.e., trade union power resources) in our analytical framework, we aim to contribute to a deeper understanding of the participatory processes of MSIs.

Trade union participation is examined through a within-case analysis of three MSIs existing in the European Union (EU)–Costa Rica pineapple supply chain. Each MSI operates at a different governance level, namely at company, national and transnational level. These are respectively the Ethical Trading Initiative (ETI), the National Platform for the responsible production and trade of pineapples (hereafter Platform) and the Civil Society Meetings (CSMs) organised within the EU–Central American Association Agreement. Based on this comprehensive overview, we found that the design and implementation of the MSIs did not enable notable substantial participation and that the union power resources also played an important role. Here, strong network embeddedness and better infrastructural resources had a positive impact, whereas fragmented internal solidarity and unfavourable narrative resources constrained trade union's participation. As such, the analysis confirms business domination and weak bargaining power of unions in the MSIs.

The paper is structured as follows. The rise of multi-stakeholderism is defined in the context of global labour governance and the basic concepts of deliberative governance are explored. Drawing on existing criteria of input legitimacy and power resource literature, an analytical framework is developed. Next, the research context, case study approach and methodology are presented before coming to the empirical findings. Here, trade union participation in the three MSIs is described and the explanatory factors—MSI design and implementation and trade union power resources—are analysed for each initiative. In the discussion and conclusion, we interpret the findings, make recommendations for improving MSIs and suggest avenues for further research.

2. Changing Labour Governance Landscape

Globalisation has brought about two trends worth considering in the light of labour rights protection.

First, a shift in global labour governance occurred in which labour rights are regulated through a combination of public (e.g., labour laws, international conventions, soft law initiatives), private (e.g., voluntary standards, codes of conducts) and hybrid (i.e., combination of both private and public initiatives) forms of governance. These new forms often seek the inclusion of non-state actors. Labour rights were historically dealt with at governmental level, as states developed labour law in the 20th century to secure justice in employment relations [16]. Through domestic labour law and the participation to dedicated international organisations such as the International Labour Organisation (ILO), states have traditionally been the drivers of labour regulation.

The expansion of supply chains around the globe beyond one state's jurisdiction gave rise to a number of governance deficits, which neither the domestic nor international institutions have been capable of governing appropriately [17]. Even though Gereffi and Mayer refer to broad societal issues,

this deficit has also had an impact on the governance of labour rights. As a result, the governance landscape has been moving away from the traditional regulatory role of the state to the inclusion of non-state actors in policy processes [4,18–20]. In doing so, non-state actors were involved both to more effectively address complex cross-border issues and to increase the legitimacy of global governance. Non-state actors comprise a variety of stakeholders including private entities such as business actors, multinational corporations, non-governmental organisations (NGOs), trade unions and academia. The involvement of these actors through hybrid public–private governance is also termed multi-stakeholder governance [21]. Although there is no internationally agreed definition for multi-stakeholderism, it has been broadly conceptualised in the field of ‘interactive governance’ as:

“the complex process through which a plurality of actors with diverging interests interact in order to formulate, promote and achieve common objectives by means of mobilizing, exchanging and deploying a range of ideas, rules and resources.” [22]

While MSIs bring together multiple actors, they can occur in different forms and sizes such as multi-stakeholder alliances, partnerships, standards and roundtables [1,4,23]. MSIs can operate at different scales—from local to transnational—in diverse sectors, regions and topics [24]. They can follow different procedural approaches, vary in duration and can evolve over time from a dialogue platform to an independent organisation with a well-established governance structure. There is also a great diversity in the range of purposes that MSIs seek to fulfil. While some MSIs aim to solve specific problems and find a common ground, others promote learning and awareness raising, foster stakeholder dialogue or focus on standard-setting and monitoring [7,25].

Second, although “Everyone has the right to form and to join trade unions for the protection of his interests” as stipulated in the Universal Declaration of Human Rights (Article 23, paragraph 4 (1948)), many workers are not allowed to organise themselves in independent organisations, and trade unionists are persecuted or discriminated against by hostile management [26]. In general, trade union bargaining power has weakened and trade union density has declined as a result of global pressures, including increased informality and flexibilisation of labour markets [27,28]. Flexible sourcing practices of retailers and brands have increased pressures on suppliers across the globe. These demand pressures are commonly transferred onto the weakest actors at the bottom of the chain, namely the workers, who need to cope with insecure contracts, low wages and excessive overtime [29,30]. Despite these challenges to union organisation, integration into global value chains also created new opportunities for local trade unions to connect and build alliances with NGOs and international trade unions [31–33]. Through these cross-border networks, private standards and brands have been criticised in campaigns addressing violations of workers’ rights at supplier sites.

These two trends, proliferation of MSIs and weak(ening) of trade unions in producing countries, are relevant when reflecting on the potential and limits of the prevailing labour governance. However, before trying to answer questions on the impact or results of MSIs one must understand the participatory processes existing within them. Therefore, this article focuses on explaining participation.

3. Deliberation and Participation

The concept of deliberative democracy is often put forward as an appropriate approach to assess new forms of governance, such as MSIs [9,34]. Deliberation—careful consideration or discussion and thoughtfully weighing options—is a central feature of MSIs since their outcome is the result of a participatory process [23,35]. Indeed, in his book ‘Foundations and Frontiers of Deliberative Governance’, Dryzek [36] explains how deliberative principles apply to governance networks, such as MSIs.

A first central aspect of deliberative democracy theory is the idea that deliberation promotes a kind of collective communicative power which neutralises coercive forms of power such as domination [37,38]. Common reasoning is essential in deliberative governance and deliberation is indispensable for collective decision making. Therefore, Hendricks [37] explains that deliberative

procedures should be designed as such that debates are shaped by the ‘force of the better argument’ and not by the most powerful or dominant actor. This entails that existing power asymmetries are diminished or even neutralised during the debates and that the outcome of the deliberative process accommodates or balances the participating interests.

Evaluations on MSIs reaching this deliberative ideal vary. Positive assessments of MSIs demonstrate how powerless actors can express their voice and successfully manage to influence decision making in their favour, whereas more critical assessments point to the failure of MSIs to redress existing power imbalances, leading to uneven participation and outcomes that do not meet the needs of less powerful actors, such as small farmers and actors from the Global South [1,12,35]. In general, authors are rather critical of the optimism surrounding MSIs.

A second fundamental element of deliberative governance is participation, as it is the precondition for any other development in the process. Moreover, the involvement of all affected stakeholders in the deliberation process is considered a source of legitimacy, assuming actors can equally share their opinion, concerns, interests and knowledge [8,23]. This source of legitimacy is often referred to in terms of input legitimacy, which addresses the question of who is entitled to make decisions and who is to be represented in the decision-making process [39]. Similarly, according to Dryzek [40], the deliberative quality of MSIs depends on, among others factors, inclusiveness.

Utting [12] found that trade union involvement in MSIs varies considerably from little or no formal involvement to significant and more extensive participation. Indeed, when delving into the participation of a stakeholder, it becomes clear that physical participation does not automatically entail that the participant’s interest will be taken into account or that they can contribute in a meaningful way to the process and influence the decisions made [14,20,23]. In general, two dimensions of participation reappear in multiple studies under different labels. Luttrell [41] labelled the dimensions ‘nominal and meaningful participation’, referring to the fact that ‘physical involvement of marginalised actors and even verbal participation by them, does not guarantee their concerns will be heard’. Similarly, Fransen [4] distinguished between ‘surface appearance’ and ‘actual involvement’ of societal interest groups in decision-making. Brem-Wilson [10] talks about ‘formal and substantive participation’, Dingwerth [42] refers to the ‘scope and quality of participation’ and Reed [15] discusses different ladders of participation distinguishing degrees of engagement.

In light of deliberative democracy theory, it is necessary to understand the participatory processes in order to grasp the outcome of the process. To be able to assess the potential of MSIs for the improvement of labour rights, it is imperative to understand the participation of trade unions in these MSIs as they represent the voice of the affected stakeholders, namely the workers. The research question addressed in this paper is therefore: what shapes the participation of trade unions in MSIs? Literature on deliberative governance indicates the importance of the design of the participatory processes. In addition, when discussing the feasibility of deliberative governance, Hendrick’s [37] recognises the need to look at the capacity of particular groups in civil society, especially powerless groups, to generate deliberation. Hence, these factors are integrated in the analytical framework presented in the next section.

4. Analytical Framework

This paper aims to contribute to a better understanding of the factors that enable or constrain trade union participation in MSIs. For this purpose, an analytical framework is developed that takes into account both the structure of the MSI (i.e., its design and implementation) as well as the agency of the participant (i.e., its power resources) (Figure 1). Building further on the distinctions in participation introduced above, we contrast ‘procedural participation’ and ‘substantial participation’ to describe the observed trade union participation. The former refers to the physical attendance and continuity of participation, whereas the latter specifies the actual contribution in shaping the content of the debate, such as actors expressing their opinions and negotiating between divergent interests [43].

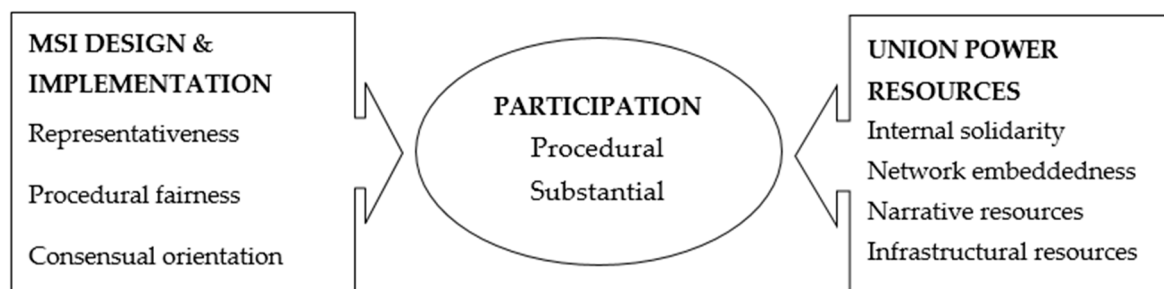


Figure 1. Analytical framework explaining trade union participation in multi-stakeholder initiatives.

4.1. Multi-Stakeholder Initiative Design and Implementation

The design of an MSI and its implementation should be examined as it will clarify whether participation is possible, desirable and effective from the point of view of the stakeholder. If the MSI is not designed to reduce power imbalances, the power asymmetry existing outside the MSI will be reproduced which might in turn influence the possibility, interest and willingness of the weaker actor to participate and consequently also the achievement of deliberation.

Various studies have shown that the set-up of an MSI has an impact on participation, especially if it foresees power-neutralising mechanisms [23], or what Luttrell [41] calls mechanisms to ‘level the playing field’. This includes power-sharing rules that allow for equal input [41], establishment of working groups and public consultation [6,9], policies to ensure balanced resourcing [44], clear selection procedures and voting systems avoiding dominance of powerful actors [5,23,41,45], an impartial facilitator [15] and providing access to information, translation services and technology [23,46].

As we will concentrate on the participatory processes within MSIs, our criteria for analysing an MSI’s design are derived from existing literature on deliberative democracy and input legitimacy of transnational governance and more specifically, MSIs [2,7,34,47]. MSI design will be assessed through three criteria: representativeness, procedural fairness and consensual orientation.

First, representativeness concerns stakeholder selection and processes that guarantee the inclusion of all relevant stakeholders, namely those affected by the issue addressed by the MSI. To assess this criterion we should, therefore, look at the stakeholder selection process [44]. In addition, one should also examine whether certain groups are excluded or if the system favours a special category of stakeholders [2]. Finally, the categorisation of the stakeholders could also play a role. Bolström and Tamm Hallström [8] explained how differentiating stakeholders in separate categories could potentially constitute a principle of exclusion from crucial decision-making arenas.

Second, procedural fairness stands for measures that diminish or neutralise power differences in decision-making processes by giving each category of stakeholder an equal and valid voice [7]. This does not only involve equal voting rights, equal status as members and access to information are also part of this criterion. This is assessed by analysing the decision-making procedures, whether they be explicit formalised rules of procedure or implicit principles. In addition to decision-making, arrangements guaranteeing the feasibility for all stakeholders to use the MSI’s participation potential is considered. More concretely, this means funding and capacity building for those groups that cannot afford to participate in the meetings [1,11,48,49].

Third, a consensual orientation is pursued through a culture of cooperation and reasonable disagreement [7]. According to the Habermasian ideal [50,51], consensus should be reached through open discussions, where reasoning trumps bargaining, in a non-coercive environment. However, as Mena and Palazzo [7] acknowledge, MSIs gather a multitude of actors with different backgrounds and conflicting objectives. Therefore, these authors deem consensus as highly unlikely and suggest reasonable disagreement. Similarly, Luttrell [41] suggests to acknowledge disparities of power, address sensitive issues head-on, and to discuss the extent to which participants can ‘agree to disagree’.

In the context of MSI design, we will look at whether and how mutual agreement is promoted. In addition, the communication attitude of participants is considered. Are these inclined to be

constructive towards other participants or rather conflictual? For multi-stakeholder processes to result in a shared initiative towards joint objectives, a constructive attitude is needed from all participants [25]. Finally, consensual orientation obviously will depend on the trust that exists between the participants. Brouwer et al. [11] found that for stakeholders to be able to address power dynamics, a basis of trust is needed. Part of the complex context of MSIs is that the weaker actors can have experienced a long history of being excluded and treated poorly, and consequently distrust the MSI if it is dominated by more powerful actors.

4.2. Union Power Resources

An underestimated and often overlooked factor in the research on participation of a weaker stakeholder in an MSI is this actor's capacity. To shed light on this aspect we rely on the theoretical notion of power resources that affect the capacity to effectively participate [8] and use the typology developed by Lévesque and Murray [27] to analyse union capacity in particular. Four trade union power resources can be distinguished: internal solidarity, network embeddedness, infrastructural resources and narrative resources.

First, internal solidarity refers to the relationship between union members, the level of engagement of members, the strategies to recruit new members, the communication methods used between union members and leaders, the leadership structure and the level of cohesion and the presence of a collective identity. Second, network embeddedness, or external solidarity, refers to the degree to which unions have horizontal and vertical links with other unions and with community groups and social movements. Trade unions act at different levels from local to global, cross borders and connect with different actors, providing different opportunities to pursue union objectives. While some unions might be isolated, others have stronger ties to (inter)national unions or other civil society actors. Such ties can be supportive [3], however, collaboration between international NGOs and trade unions can also create tensions [52]. Third, narrative resources refer to the range of values and stories about trade unions that provide shared understandings and frame the way union members think and act [27]. Brouwer et al. [11] confirm this power resource which is invisible and difficult to change. In some cases, these deeply rooted structures, culture, behaviour and norms can lead to conservative, entrenched positions. Fourth, infrastructural resources refer to the material (money, meeting rooms), human (time, expertise) and organisational resources (use of technologies, training) [27].

We expect that weak levels of these four resources will negatively affect trade union participation in MSIs.

5. Research Approach

5.1. Research Context: Labour Rights Issues in Costa Rica and Its Pineapple Industry

Costa Rica is currently the biggest exporter of fresh pineapples, exporting 90% of fresh pineapples in the world, which represents 8.4% of the country's total exports [53]. From 2000 onwards the country's pineapple industry began to expand rapidly, from 11,000 ha to more than 44,000 ha in 2018 [54]. According to the Costa Rican Chamber of Pineapple Producers (CANAPEP), the pineapple industry has generated 32,000 jobs directly and over 130,000 jobs indirectly throughout the country. However, the rapid expansion has had negative environmental and social impacts, including those upon working conditions and the protection of labour rights.

Concerning labour rights issues, Costa Rica is notorious for its anti-union culture in the private sector (see *infra*), where only 2% of the workforce is unionised. Labour struggles were most prevalent in the banana industry, where the level of unionisation dropped from 90% in 1982 to 5% in 1987 after a defamation campaign against trade unions [55]. Perhaps the most frequent obstacle to collective labour rights in this country concerns the promotion of solidarist associations (known as *solidarismo*) and, specifically, the extent to which such associations prevent the development and functioning of effective and independent workers' organisations such as trade unions [56]. These solidarist associations are

partly financed by management and do not recognise the right to collective bargaining as formulated in ILO Convention No. 98 (1949) [57]. While solidarist associations are on the rise, anti-union practices such as discrimination and dismissal because of trade union membership have been repeatedly reported to the ILO Committee of Experts and are partly responsible for the weakening of trade unions across the country [58,59]. In the wake of anti-union campaigns and employers' preference for negotiating with solidarist associations, the pineapple industry is characterised by a very low unionisation rate and accordingly no collective bargaining agreement has been established in any pineapple plantation [60,61].

5.2. Case Study Selection and Description

The EU-Costa Rica pineapple supply chain is an interesting case because it demonstrates how the expansion of an export crop has affected local communities and workers and raises the issue of the effectiveness of current labour governance mechanisms. Moreover, the industry is confronted with many of the environmental and social challenges that booming export regions face around the world. During our field research, we came across three MSIs in the pineapple industry, each one operating at a different governance level (company, national, transnational). Although the MSIs' objective, scope, duration, origins and functioning differ (see Table 1), they have in common that they aim at gathering the relevant stakeholders to make businesses and trade more sustainable. Instead of a comparative case study, we opted for a comprehensive within-case analysis of three key initiatives allowing for an exhaustive examination of trade union participation in MSIs across the EU-Costa Rica pineapple supply chain, ranging from their involvement in specific company issues to broader trade-related discussions in civil society fora. By analysing three initiatives we intend to create an overall understanding of trade union participation in MSIs throughout one specific supply chain and to identify which constraining or enabling factors they have in common. In what follows, the general characteristics of the three initiatives are described.

Table 1. General characteristics of the three MSIs.

	Ethical Trading Initiative (ETI) and Fyffes	National Platform for the Responsible Production and Trade of Pineapples (Platform)	Civil Society Mechanisms within European–Central American Association Agreement (CSMs)
Governance level	Company	National	Transnational
Objective	To promote respect for workers' rights	To improve social and environmental performance	To advise and make recommendations on implementation trade and sustainable development chapter
Scope	Global value chains	Costa Rica pineapple production and trade	Trade-related aspects of sustainable development
Multi-stakeholder dimension	Business, trade unions, non-governmental organization (NGO) members	Business, civil society, academia, government	Economic, social and environmental stakeholders
Approach	Learning approach Standard setting	Project approach Formal action plan	Dialogue approach Monitoring
Duration	1998–ongoing	2011–2017	2013–ongoing
Founders	Select group of UK retailers, NGOs, trade unions and UK government	United Nations Development Programme (UNDP)	European Union (EU)
Funding	Start-up grants UK government, membership fees	UNDP, Dutch NGO, Dutch public-private partnership	Little EU funding for EU CSMs, no funding (yet) for Central American CSMs

5.2.1. The Ethical Trading Initiative and Call for Action against Fyffes

ETI is a membership-based MSI bringing together companies, trade unions and NGOs to improve working conditions in global value chains. It has been established in 1998 with the support of the UK government and has developed a Base Code for corporate members to support continuous

improvement regarding decent work [62]. ETI is governed by a tripartite board (comprising trade unions, NGOs and corporate members) which reviews the performance of companies, can hold them accountable in case of complaints following disciplinary procedures, and provides remedies [63]. To examine how unions in suppliers' sites participate in the work of ETI, we do not evaluate the general functioning of ETI but single out one corporate member of ETI, namely Fyffes. This company has recently been accused of labour rights violations in its subsidiaries' pineapple (ANEXCO) and melon (Suragroh) plantations in, respectively, Costa Rica and Honduras [64,65]. Fyffes is an Irish importer and distributor of tropical produce which was sold to the Japanese conglomerate Sumitomo in 2017 [66,67]. It was mentioned in 2016 in the Make Fruit Fair awareness raising and advocacy campaign calling for "Freedom and fairness for Fyffes workers" [64]. According to the campaign, the violations concern a disregard of freedom of association, as Fyffes seems not to recognise independent trade unions. At the time of writing, Fyffes has been suspended from ETI due to a lack of progress on the accused labour right violations in Honduras [68].

5.2.2. National Platform for Responsible Pineapple Production and Trade in Costa Rica

In 2011, the Platform was established with the support of the United Nations Development Programme's (UNDP) Green Commodities Programme and coordinated by the Costa Rican Second Vice-presidency, Ministry of Agriculture and the Ministry of Energy and Environment. It received funding from a Dutch NGO, the Interchurch Organisation for Development Cooperation (ICCO), in the first phase (2011–2014) and from the Sustainable Trade Initiative (IDH), a Dutch public–private initiative, in the second phase to ensure the continuity of the process. The UNDP was the driving force behind the creation of this multi-stakeholder platform and identified a range of environmental and social challenges that should be dealt with by the Costa Rican government in collaboration with relevant stakeholders.

Over the entire period, the Platform gathered about 900 participants from more than 50 organisations from business, NGOs, communities, academia and related national government institutions to improve the sustainability performance of pineapple production through the development of a national strategy with concrete actions [69]. The Platform had to develop an action plan determining the responsibilities of the government and industry players [70]. For this purpose, it organised four annual plenary meetings, thirty thematic working groups and several panel debates. In 2016, the action plan was finalised and the Costa Rican government adopted it in decree N°39462. The Platform mechanism did not put the social dimension on equal footing with the environmental and economic considerations, nor was it able to ensure that demands of all parties were equally considered (see *infra*).

5.2.3. Civil Society Meetings of the European Union–Central America Association Agreement

The new generation EU trade agreements, starting from the EU–Korea trade agreement in 2011, contain chapters on trade and sustainable development. These chapters refer to labour and environmental standards that should be respected in the framework of the agreement. Civil society meetings (CSMs) are created to follow up on, advise and monitor the commitments made in these sustainable development chapters. Even though there is variation in the legal texts establishing these meetings [71], several foundational features reoccur. First, each party agrees to create or consult an independent domestic civil society mechanism (often called a Domestic Advisory Group (DAG)). Second, an annual transnational meeting should be organised. Here, members of the domestic mechanisms and/or other civil society actors meet. Third, some interaction is foreseen between these two meetings and the intergovernmental body (officials of the EU and its trading partner(s)) that meets annually to discuss the implementation of the trade and sustainable development chapter.

The EU and six Central American countries—Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama—signed the EU–Central American Association Agreement which has been applied since 2013. Each Central American country (should have) assembled its own DAG. The Costa Rican DAG, together with that from Guatemala, is functioning relatively well in the sense that an

independent DAG with civil society members actually exists, as other DAGs are characterised by governmental presence and/or a general lack of participants. In general, the meetings have, similar to those organised in the context of other EU trade agreements, experienced a slow start and have had difficulties generating an internal dynamic [72].

Following discussions on labour issues and corporate social responsibility (CSR) during the civil society and governmental meetings, two seminars, in Costa Rica (May 2017) and Guatemala (May 2018), were organised. Both events covered general CSR topics such as responsible value chains, international CSR instruments and sectoral case studies. In addition, the OECD and the ILO gave a workshop on a related issue [73,74].

5.3. Data Collection and Methodology

The interdisciplinary research presented in this paper is based on (1) 37 semi-structured interviews with various actors from different stakeholder categories, (2) three focus groups with trade union members, (3) eight nonparticipant observations during CSMs in the framework of the Association Agreement and (4) document analysis. Extensive field research was conducted in Costa Rica (2015–2016) with Costa Rican representatives and in Belgium (2015–2017) with EU representatives. These two rounds of data collection were followed-up by interviews in 2018 to collect additional information on the concerned multi-stakeholder initiatives for this case study (see Table A1 in Appendix A). To protect the identity of the respondents, we aggregated the respondents per region and type of actor. The following combination of letters and numbers were used to indicate to which group a respondent belongs (see Appendix A): Costa Rica is abbreviated by the letters CR, U refers to unions, G for government officials, and B for business representatives. The letters EU represent European officials, EUCS stands for European civil society actors and ILO officials carry the letter I.

In Costa Rica we targeted key informants, categorised in the following three groups to get a comprehensive sample of different stakeholder perspectives: business representatives (such as CANAPEP), trade unions (at national, sectoral and plantation level) and government officials (including the Ministry of External Trade, Agriculture and Labour). Through snowball sampling, we conducted face-to-face expert interviews [75] with representatives of the Costa Rican pineapple unions (6), government (8), business (5) and ILO officials (3). In addition, three focus groups (with respectively 6, 14 and 4 trade union members) were organised to become more acquainted with Costa Rican trade unionism and to gather more factual information. For the perspectives of EU civil society actors and officials involved in the CSMs, we conducted 15 expert interviews with key informants identified from the list of CSM participants as well as officials from the European Commission and the Delegation of the EU to Costa Rica.

An interview guide was developed for each group of respondents covering topics related to the perception and functioning of trade unions in Costa Rica, the challenges to improve labour rights in the pineapple industry, the existing governance mechanisms and regulatory framework, and a set of more specific questions on the MSIs discussed in this study, including the motives for participation, the design and participatory decision-making process and the results.

The document analysis concerns the content of public video footage, press releases, event reports, presentations, email correspondence, participant lists and meeting minutes of the three MSIs. In addition, one of the researchers observed two transnational meetings, two DAG-to-DAG meetings and four EU DAG meetings where she could listen to the discussions and gain insights on the participatory dynamics and methods. This qualitative data was triangulated through interviews with members of the MSIs.

The relevant parts of the interview and observation notes and transcripts were extracted in a qualitative content analysis [76,77]. A cross table was constructed for each of the three MSIs where the extracted data was summarised and reformulated in a more general language and structured according to the analytical framework (see Appendix B). Even though this analytical framework draws heavily on existing literature, it was fine-tuned in an inductive manner. This analysis was then transformed

in a thick description of trade union participation and a study of the structural and agency factors determining trade union participation in MSIs.

Two important limitations of the data collection need to be acknowledged. First, the presence of the researcher in the room during the CSMs could have potentially influenced the discussions, because the participants feel they are being “watched” (i.e., observer effect [78]). Second, the subgroup of business actors was underrepresented in our sample because of the sensitivity of labour issues and their limited willingness to meet for interviews [79]. Concerning the case of Fyffes, ETI declined our interview request and only confirmed the latest status update over email to preserve the confidentiality of their members.

6. Findings

6.1. Procedural and Substantial Participation of Trade Unions

6.1.1. Participation of Trade Unions in ETI–Fyffes

“Six management assistants were assigned as facilitators [for the capacity building event]. This is worrying because they were exactly the ones behind the anti-union campaign, discrimination, persecution and dismissals. The initiative was, therefore, practically born dead for the union members. Following the pressure exercised by our members, they appointed four facilitators of the union but without adequate material and knowledge to enable facilitation. Their participation was inconstant and in some activities they could practically not participate at all. [. . .] They did not take union members into account in this capacity-building event, which could have served as a platform for the establishment of real social dialogue. During the capacity building, management impeded and threatened normal participation of trade union members.”—Personal communication with CRU2

Procedural Participation

The participation of Costa Rican trade unions to ETI occurred indirectly through the support they received from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) and the NGO Bananalink, with whom they had long standing relationships. Bananalink is also a partner of the Make Fruit Fair campaign. Mediation attempts by ETI and the Costa Rican Ministry of Labour to bring the trade union SINTRAPEM (Sindicato Nacional de Trabajadores/as del Sector Privado Empresarial) and management of the subsidiary plantation ANEXCO together around a negotiation table in 2016 failed [80]. In response to the urgent action call, ETI conducted a field visit to investigate the allegations and produced an internal report with recommendations. One of those was a capacity-building session for unions and management which took place in November 2016 [EUCS7]. ETI financed the event and sent independent consultants to facilitate a dialogue between local management and trade union representatives to discuss the matter. The participation of most representatives was cancelled as they did not receive the permission from the management to be absent to attend the capacity-building session [CRU2].

Substantial Participation

Local unions provided evidence of violations to prepare the campaign and complaint. They determined the direction and did the legwork for the campaign whereas Bananalink supported them [EUCS7]. The NGO wrote to Fyffes Chairman in November 2016 asking him to address the issues without response; later they sent a petition letter signed by more than 40,000 people [81]. The local union was engaged and communicative, they hosted a visit that helped to gather documentation for the Fyffes campaign. The mediation by ETI allowed unions to express their concerns about the willingness of management to have dialogue and the persistent labour rights violations in the plantations. During the capacity-building event, the trade unionists’ input was limited as they were

in the minority. Although the local union leader denounced these practices, no further actions were taken by ETI in Costa Rica because the focus had moved to the complaint in Honduras [EUCS7].

6.1.2. Participation of Trade Unions in the Platform

“They [CANAPEP] never wanted us to be present in the Platform. We went to the launch of the platform and after a couple of months they proposed to organise working groups on soil and pesticide application among others, but none of the working groups covered labour issues. We went to the ILO to suggest a working group for the discussion of labour aspects, but CANAPEP did not want to sit together with us, they prefer to sit together with the solidarist associations only. The platform is a lie, they just waste resources.”—CRU1

Procedural Participation

When assessing physical attendance over the entire period of the Platform, producers (27%) and government actors (36%) dominated the meetings while unions (1%) and NGOs (9%) were underrepresented [70]. Other smaller categories of stakeholders were buyers, international organisations, communities and academics. There was resistance from the producers’ side to include trade unions upon which Bananalink pressured the Dutch NGO ICCO, which co-financed the Platform, to insist on trade union participation [EUCS7]. However, industry players refused to address any of the trade union issues and ultimately trade unions decided to withdraw their participation. Consequently, they were not involved in the final decision-making process of the action plan and were also not part of the follow-up committee monitoring its implementation [82].

Substantial Participation

Before the Platform, there was hardly space for dialogue between trade unions, business and government to find solutions for the social and environmental problems of pineapple production. Problems were mainly discussed through judicial avenues. Trade unions saw the Platform as a unique opportunity to share their viewpoint with business and government [70,83,84]. A trade union representative of SITRAP (Sindicato de Trabajadores de Plantaciones Agrícolas) attempted to put freedom of association and collective bargaining on the table during the first annual meeting and drew a picture of the difficulties that they are facing. However, attempts to facilitate dialogue between government, employers and trade unions to discuss the working conditions in plantations failed because of the irreconcilable differences in opinions among the parties.

In a workshop organised to review the proposed action plan in February 2014—where unions were not present—business representatives requested the modification of the reference to worker’s organisations in the action line dealing with national dialogue on labour rights [84]. In addition, CANAPEP put an ultimatum to exclude any reference to freedom of association. Industry players argued that the issue of trade unions is not unique to pineapple, and should be addressed at national level through enforcement of existing labour laws. Instead, they suggested to include in the action plan that the government should promote the international recognition of alternative labour organisations (i.e., *solidarismo*) that, according to them, represent pineapple workers in Costa Rica [83]. Consequently, promoting national dialogue on labour rights was replaced by a more general action for promoting dialogue spaces on environmental and social responsibility, omitting explicit actions related to freedom of association [70].

6.1.3. Participation of Trade Unions in Civil Society Meetings in EU–Central America Trade Agreement

“It’s a new type of meeting that doesn’t exist at national level. The agreement creates a space to discuss the issue of labour rights violations. But it is still a very limited and superficial dialogue. The format does not allow for an integral discussion, the debated topics are secondary, not fundamental. It is nothing more than a dialogue of the deaf. There is no interest in reaching agreement. Everyone

simply states his position. That's it. If certain sectors put their veto and don't want to discuss further, the dialogue loses its meaning."—CRU5

Procedural Participation

The official list of the members of the Costa Rican DAG contains seven trade unions. However, only two of them participate actively, namely Central del Movimiento de Trabajadores Costarricenses (CMTC) and Bloque Unitario Sindical y Social Costarricense (BUSSCO) [85] [CRU5]. All secretaries-general of the Costa Rican trade union federations were included in the list; however, most of them are not aware of their membership or even of the existence of the DAG [CRU1,CRU5]. It must be said that limited trade union participation in the DAGs is not specific to Costa Rica; in all Central American DAGs trade unions are barely represented.

Regarding trade union physical attendance during the CSR seminars, a considerable difference was noted between both seminars. Whereas this stakeholder category was barely represented during the first event in Costa Rica, there were significantly more—mainly Guatemalan—trade unionists present during the second event [EUCS5,EU3].

Substantial Participation

The limited trade union representation in the Costa Rican DAG, and Central American DAGs in general, has severe consequences on the substantive work done as little or no input is given by Central American trade unionists in the domestic meetings. During the transnational meetings Central American (and European) trade unionists have made some denunciations about labour rights violations such as the limited freedom of association or violations in specific companies (e.g., Fyffes). Nevertheless, little is done in response to these statements as the documents summarising the discussions of these meetings, which are presented to the intergovernmental board, remain general, and do not include the input [EUCS11].

In 2017, the members of the different DAGs agreed to collaborate on four themes: CSR, Decent Work, Small and Medium Enterprises and Market Access. The objective was to write a commonly agreed two-pager on each topic and to submit it to the Board at the occasion of the next transnational meeting. Two rapporteurs were appointed for each paper, an EU and Central American DAG member. Although there were exchanges of views from both sides, in the end no Central American trade unions contributed to the content of the documents [EUCS9]. Ultimately, the documents were not presented during the next meeting with the Board as two Central American business organisations opposed the content of the documents on Decent Work and CSR shortly before the meeting, even though they had been agreed upon in principle by the Central American rapporteurs and all EU DAG members [EUCS6].

Turning to the CSR seminars, we learned that the organisers (i.e., the European Commission, relevant EU delegations and respectively Costa Rica and Guatemala) had determined not to focus on labour rights violations as such. Instead, broader and more positive issues were put forward to address labour rights (e.g., social protection) [I3]. In Guatemala, during the workshop given by the ILO, participants were divided into small roundtable groups. Each table had governmental, business and trade union representatives who discussed several case studies [I3]. This resulted in dynamic dialogues between the participants and was evaluated as a positive experience [EU3,I3,EUCS5].

In sum, we find that local trade unions did not participate consistently or directly and were sometimes even excluded from meetings in all MSIs (Table A2 in Appendix B). We note that procedural participation of unions was intermediate in ETI-Fyffes, low in CSMs, and can even be considered very low in the Platform since unions dropped out. Regarding substantial participation, unions were somewhat able to provide information and raise concerns, whereas they were still constrained in the extent to which they could influence decision-making and their concerns were taken into account. In the case of ETI, intermediate substantial participation was observed as they gave more input compared to the low substantial participation in the CSMs. Again, this contrasts with the very low

substantial participation found in the Platform where unions were not at all able to provide input and consequently were also not considered in the final decision-making of the action plan. In what follows, we explain what factors led to these low degrees of procedural and substantial participation, based on an assessment of the MSI design and implementation (structural factors) and trade union capacity (agency factors).

6.2. MSI Design and Implementation

6.2.1. Representativeness

To evaluate the representativeness in the three MSIs, their selection procedures were analysed with attention for the exclusion or categorisation of certain stakeholders groups.

First, in the ETI case, ETI members IUF and Bananalink, respectively a global trade union and an NGO, played the role of bridge builder and gatekeeper as only member organisations can raise concerns or file a complaint within this MSI. However, during the implementation of ETI's recommendations, the participation of the local trade unions was left to the local management of the plantation. The local union leader complained about the vague communication on the organisation of the meetings because they received the invitation to join the meeting with ETI only two days in advance [CRU2]. This resulted in exclusion and thus low representativeness. Second, in the context of the Platform, unclear selection criteria, active resistance against trade union participation by the business side and a preference for high-level participants resulted in very low representativeness of the unions. Third, the EU–Central America trade agreement specifies that members of the DAG should be independent representative organisations, and that economic, social and environmental stakeholders should be represented in a balanced way. However, the selection of the participants is left to the discretion of the governments, with no clarity on the criteria used. In Costa Rica, the invitation procedure has been faulty as some trade union representatives included in the members' list were not aware of their new role. Commercial interests had already been involved during the negotiation of the trade agreement and businesses had closer ties with the Ministry of External Trade. They were, therefore, better aware of the creation of the DAG. In addition, Costa Rica decided to subdivide its DAG in three separate groups, one for each stakeholder category (business, trade union and environment). This categorisation could potentially isolate less well coordinated actors, such as trade unions, and impede collaboration between the different interests. Trade unions were implicitly excluded from the first CSR seminar as the organisers had framed CSR as a business topic. During the preparation of the second seminar, trade unions were actively invited by the local EU delegations and a Guatemalan CSR association.

6.2.2. Procedural Fairness

This criterion is assessed through the examination of the way decision-making procedures allow for equal opportunities between participants to express their voice and be heard as well as funding and capacity building supporting the participation of weaker actors.

In the ETI case, rules of procedures regarding governance mechanisms and disciplinary measures are formalised for members and the implementation is strongly monitored by ETI members representing local trade unions. However, ETI does not cover the translation of relevant documents on the progress of the case in the language of the affected workers. In order to give the local trade unions the opportunity to be correctly informed, Bananalink dealt with this costly task [EUCS7]. Trade unions are exempted from paying ETI membership fees, but other financial support measures for local trade unions are limited. ETI did fund an ad hoc session to be given by consultants in Costa Rica to trade unions which was then obstructed by the local management. Since ETI does not actively promote local trade union participation along with a considerable margin of manoeuvre for local management to disregard ETI's efforts, the procedural fairness within ETI is low.

Even though the Platform was established to design a common action plan through the involvement of numerous stakeholders, no moderator or agreed decision-making procedure was foreseen. In the end, the content of the action plan was reached by consensus. However, by that time, trade unions were no longer involved in the Platform entailing the consensus was agreed upon by likeminded business actors. The absence of an entire stakeholder category was possible because the participation of the business side was considered more essential for the existence of the Platform [CRG4]. Funding of the Platform was used for the organisation of workshops, but the topics did not cover labour rights nor were transport costs reimbursed for union representatives coming from the pineapple-producing regions. It can therefore be concluded that no procedural fairness was pursued vis-a-vis trade unions and that the procedures were in favour of the pineapple producers.

Turning to procedural fairness in the CSMs, it should be noted that the Central American DAGs have not agreed upon rules of procedures. This entails that there are no clear rules on how decisions are supposed to be taken. Even though in practice decisions have been taken by consensus (see *infra*), business is in the majority to overrule the voice of other interests. During the transnational meetings all participants can express their concerns by raising their hand and they will be given the floor by the moderator. Since the outset, funding has been a critical point for the CSMs. Whereas the European Economic and Social Committee has taken up the role of secretariat in the EU and the European Commission makes travel funds available for at least one participant per stakeholder category, there is no funding whatsoever foreseen in Central America. This has been criticised heavily by EU and Central American civil society, because travel distances are rather important (within the Central American region or to Brussels) and not-for-profit actors have limited financial resources. To address these shortcomings, the EU has created a three-year project of three million euros to support civil society participation in the implementation of EU trade agreements [86]. At the time of writing the implementation of the project has not yet started. Regarding the CSR seminars, more EU funding was available for regional participation in the second event, which had a positive impact on local trade union participation [EU3,I3].

6.2.3. Consensual Orientation

To determine this final criterion, the pursuit of mutual agreement is considered as well as the communication attitude and trust among the different stakeholders.

Following the allegations against Fyffes, ETI facilitated a meeting between the unions and the local management. It was, however, not possible to reach a mutual agreement. In general, the communication attitude of Fyffes was perceived as rather hostile. Due to Fyffes unresponsiveness to the grievance in its Costa Rican pineapple plantation, Bananalink launched a public campaign against practices in Honduras. This was not appreciated by Fyffes, who claimed this was against the code of conduct of ETI members. Fyffes stated that they do not respond to public pressure and they “dug their heels in” concerning the recognition of trade unions [EUCS7]. Although building trust relationships is a central element of ETI’s approach, trust has been broken both by Bananalink and Fyffes through their communication. In sum, even though consensual orientation is an important objective of ETI, it was impeded by the communication attitude and damaged trust on both sides.

In the Platform, the ILO mediated between trade unions and producers to find mutual agreement between them. This attempt was unsuccessful and trade unions left the Platform. In addition to irreconcilable positions, the negative and aggressive communication attitude, considered ‘emotional’ language, of trade unions was also part of the issue as they wanted to make denunciations and discuss labour rights violations. This stood in the way of dialogue and the evolution of the Platform as producers claimed this was not the right place for it. Moreover, there was an overall distrust in the neutrality of the Platform and a deep mutual distrust between the trade unions and producers. To conclude, even though there had been a mediation attempt by the ILO, consensual orientation could not be fulfilled due to miscommunication and a lack of trust.

Finally, there is a consensus-based approach in the CSMs. It is, however, uncertain if this approach of mutual agreement can be sustained as experience has shown that business interests do not shy away from vetoing the inclusion of labour proposals in statements from the transnational CSMs [EUCS10] as well as in joint working documents [EUCS6]. An internal reflection is being conducted, mainly by the EU side, to assess how collaboration should be continued [EUCS5]. Regarding the communication attitude, trade unions have made denunciations at several occasions concerning labour rights violations in specific companies such as Fyffes [EUCS11]. These efforts received little support, as other participants claimed that denunciations should not be done during the meetings as the DAGs are not supposed to deal with specific cases. Since the inception of the DAGs, members have been trying to build trust within and among the DAGs. The recent unexpected last minute veto by Central American business representatives against the submission of joint working documents to the Board was a serious blow to this trust. In addition, local trade unions—who have protested against the trade agreement during the negotiations—remain on their guard for co-optation as the CSMs and their participation could legitimise the agreement. In sum, the consensual orientation in the CSMs appeared to be rather vulnerable as mutual agreement is under pressure, there is a mismatch of communication attitudes, and trust has been damaged. Turning to the CSR seminars, both organisers and participants agreed that the format of the workshops invited the participants to collaborate constructively instead of the more traditional conflictive communication [EU3,EUCS5].

In sum, the three criteria explaining trade union participation through the MSI design and implantation score low to very low in each MSI (Table A3 in Appendix B). To have a more comprehensive picture on the enabling and constraining factors of this participation, we should also take more internal aspects of trade unions into account. In the following section the influence of their power resources on their participation will be examined.

6.3. Union Power Resources

6.3.1. Internal Solidarity

In general, plantation unions suffer from weak levels of member engagement, because not all members are willing to sacrifice time during weekends or after work for meetings [CRU4]. For example, in the case of ETI, the local union leader is most engaged in following up on complaints as other members do not play a prominent role due to their limited experience with and knowledge of legal procedures. Mobile phones are the main means of communication between members and local leaders, and not all members are literate. There is not a dense network of union representatives in the workplace and members are isolated in different teams spread across the plantation fields. At sectoral level, a major challenge is to foster a collective identity among plantation workers. Although workers' problems are of the same nature, the majority of plantation workers are Nicaraguan migrants which impedes their potential participation and membership to unions. They work to earn an income for their household, do not want to risk losing their job by forming or joining a union to fight their cause and may only be on the plantation on a temporary basis. Unions experience difficulties to mobilise new members to join the union and often lack a clear strategy on how to do so. The negative perception that unions destroy the economy and cause trouble discourages pineapple workers to join unions out of fear for reprisals [I2].

6.3.2. Network Embeddedness

The fragmentation of trade unions in the Costa Rican private sector can be traced back to two events affecting the country's political economy. First, the Communist Party and their labour confederation, who had succeeded in organising the banana workers, were outlawed shortly after the civil war ended in 1948 [55]. The loss of legal recognition of the Communist trade union left banana workers, who had had one of the strongest and most militant unions of Costa Rica, divided. This represented a first severe blow to trade unionism in the agricultural industry as the corporations

did their utmost best to maintain the situation and prevented the emergence of another powerful union among its workers. Second, during the 1980s, an economic crisis and steep rise of foreign debt resulted in forced neoliberal policies promoting export sectors. This period had detrimental consequences for Costa Rican trade unions and the current anti-union culture stems from this context of deregulation and austerity measures in which private employers created evasive structures and adopted a strong anti-union attitude [87].

In the case of ETI, SINTRAPEM has strong ties with IUF and Bananalink who supported them in preparing the complaint and campaign against Fyffes. They are also connected to the Coordinating Body of Latin American Banana and Agro-industrial Unions (COLSIBA) to share experiences and strengthen their ability to fight violations internationally. In the context of the Platform, local unions did not leverage their ties with international unions. Moreover, the network of pineapple unions is spread over different plantations and decentralised without well-established ties to other unions, for example the stronger public sector unions. Unions act more independently, targeting specific companies with specific issues or demands in isolation. Costa Rican (and Central American) trade union participation during the CSMs is stimulated by EU trade unionists who have, on the one hand, together with EU NGOs, continuously been raising awareness about the CSMs in Central America in order to increase trade union participation [EUCS9]. On the other hand, they have repeatedly complained to the European Commission about the lack of Central American trade unions participating in the CSMs, hoping for EU pressure on the Central American governments to stimulate trade union participation. However, it should be noted that when Central American trade unions participate in the CSMs, they are most likely high-level representatives. In Costa Rica, they are representing national federations and consequently disconnected from the realities in the plantations.

The findings show that it has been difficult to build coalitions between local unions, however, trade unions were able to connect to international actors (in the case of ETI and CSMs) and to benefit from capacity-building activities.

6.3.3. Narrative Resources

Given the heritage of labour struggles in the country (see *supra*), unions follow a defensive narrative in the way they act and think. For example, they used the Platform as a forum to denounce anti-union practices by referring to anecdotes of discrimination and persecution, because there was no direct line of communication between workers and management in the plantations. Unions represent only a very small share of workers due to the anti-union campaign and management support for solidarist associations. They have to compete with the discourse of *solidarismo* which tries to win members through offering tangible benefits (e.g., credit opportunities or rain jackets) and are more convincing in the eyes of workers. Yet, solidarist associations do not recognise the right to collective bargaining since they are not allowed to negotiate collective agreements by law.

The ideological trade union background also informed their actions in MSIs. For example, in the CSMs, a union decided not to participate in the MSI because it would have interpreted its participation as approving the agreement and feared being co-opted [CRU5]. Some unions did not perceive MSIs as valuable channels to achieve their objectives. Unions also questioned the credibility of private voluntary standards and feared that it is 'big business', used as marketing strategy for companies and not to genuinely improve labour rights [CRU2]. This stock of negative experiences with certification audits translated into a general mistrust and disinterest towards mediation efforts and dialogue opportunities foreseen in MSIs.

6.3.4. Infrastructural Resources

Human resources for the daily functioning of unions are limited since offices are often run by one person and a secretary. The union leader needs to divide his time between representing workers in court, visiting the Ministry of Labour for mediation in the capital city, attending workers in the field and organising training sessions and meetings with the members [CRU2].

In general, being part of an MSI requires time and preparation, while in many cases unions are not able to send a representative because they have other priorities connected to their grassroots trade union activities. They may also not be familiar with the professional language (often English) used in those MSIs and lack the negotiation or communication skills needed to foster consensus. It is also more interesting for unions to directly negotiate with management than to participate in dialogue platforms with no immediate, concrete results.

Turning to the material resources, the costs of transport to the place where the MSIs are organised, often the capital city or abroad, are too high for unions. While some unions benefit from donor funding, other unions have limited operating resources coming from membership fees. Unions in the field have also limited organisational resources (such as computers, meeting rooms or cars) to communicate and interact with members and other actors.

The analysis of power resources of trade unions (Table A4 in Appendix B) in addition to MSI design and implementation allows for a more complete view of the determinants of trade union participation.

7. Discussion

Our findings endorse the concern that MSIs are not as inclusive as they aspire or pretend to be. Physical attendance does not necessarily imply participants will be heard. This confirms the relevance of distinguishing between procedural and substantial dimensions of participation when assessing how a (weaker) stakeholder is involved. In what follows, our findings are discussed and used to articulate practical recommendations, relevant for MSI organisers, participants and decision makers alike.

The three criteria assessed for the design and implementation of the MSIs, show how the participatory processes remain far from the deliberative ideal of collective communication and inclusiveness. The three initiatives experience several challenges constraining representativeness, procedural fairness and consensual orientation which explain in part the overall limited participation of trade unions. To achieve a better quality of participation and deliberation, power inequalities among its participants should be addressed by improving MSI design. Recommendations on the design and implementation of MSIs are deduced from our findings and clustered around each criteria.

First, the selection criteria for participation to the MSI should be clearly predefined and ensure the representativeness of the participants. Stakeholders should be identified together with a mapping of potential conflicts, expectations and their power resources [13]. These should then be taken into account by a neutral facilitator, for example an impartial secretariat, who can support the participation of a contested stakeholder category.

Second, regarding procedural fairness, clear goals and rules of decision-making should be set from the start and agreed by all stakeholders, stronger and weaker stakeholders alike [88]. This is a first exercise in redressing power inequalities and confirmed in other research on MSIs [7,13]. It should also be possible to reassess these rules at a later stage. Participants should feel that their input is considered and the use of vetoes that are not open for discussion, especially by powerful actors, should be refrained from. Practically, as also stated in Brown [14], resources should be made available for translation services and transport ensuring the participation of less resourceful stakeholders. Finally, as became clear in the ETI case as well as the CSMs, international actors play an important role as bridge builders pushing for local trade union participation and making their voice heard. This leverage effect has been confirmed in other studies [31].

Third, concerning the consensual orientation in MSIs, we see that building trust between actors with divergent positions is challenging. Therefore, the format of MSIs should recognise existing power differences and facilitate a rapprochement between business and unions, for example through small working groups and capacity-building events as suggested by Reed [15]. Yet, reaching a consensual orientation requires a constructive communication attitude and especially willingness from all parties to listen to different positions. An impartial moderator can help to preserve positive group dynamics, control dominant voices and ensure that less powerful actors can give input. If agenda items suggested

by weaker participants are deliberately ignored, the credibility of the MSI is threatened and these participants can vote with their feet and withdraw [14]. Finally, the organisation of mediation and capacity-building events should be left to, or at least involve, a neutral actor to overcome entrenched positions between conflicting parties such as local management and unions.

In general, MSIs should be interpreted as a learning process and benefit from continuous internal evaluation and reflection on obstacles that impede the engagement of weaker actors. This need for iterative learning is also stressed in adaptive management approaches to long-term participatory processes as suggested by Stringer et al. [89]. In addition, our analysis showed how the local context often hampers deliberation and the rebalancing of interests. This was particularly the case in the Platform, where hardly any efforts were made to ensure that weaker actors could give their input and were listened to. Since every MSI is influenced by the (local) context in which it operates, it requires a customised and localised strategy that incorporates feedback from participations and is sensitive to signals showing the need for redesigning participatory procedures or capacity building adapted to weaker stakeholders. Finally, even though implementing changes is time and resource consuming, MSIs can benefit from a more bottom-up involvement of workers and unions, contrary to high-level representation, as has been demonstrated in recent developments in worker-driven social responsibility [88].

The analysis also indicates that the design of an MSI is not all-decisive as insights on trade union power resources also helped to explain their participation. We found that strong network embeddedness and improved infrastructural resources enhanced trade union participation, whereas the lack of internal solidarity and unfavourable narrative resources had a negative effect on their participation.

When looking for ways to boost union's power resources, the most feasible improvements can be found in network embeddedness and infrastructural resources. Strengthening ties with international organisations are an important enabling factor for trade union participation to MSIs. They can demand involvement in MSIs, facilitate meetings, and support local unions' infrastructural resources. Yet, dependency on international alliances can also become a pitfall if the need for better internal union solidarity is neglected and the union relies exclusively on external support.

Even though internal solidarity and narrative resources should not be ignored, changing a highly fragmented trade union landscape, the negative reputation of trade unions and local norms cannot happen overnight [27]. Therefore, it is essential that local unions join forces and build alliances or coalitions at sectoral level to deal with societal and managerial counter pressures and more actively engage in the dialogue spaces created by MSIs.

When linking the design and implementation of MSIs to the power resources of trade unions, two relevant interactions, implying practical takeaways, are observed. First, procedural fairness can be increased through network embeddedness and infrastructural resources. For instance, in the ETI case the international partners of the local trade unions strived for their involvement by assisting them in their communication and translating relevant documents. In the CSMs, EU trade unions have been very insistent upon encouraging the participation of their Central American counterpart. In addition, funding is being made available to ensure the participation of less affluent participants. Strong network embeddedness is missing in the Platform, which is also the initiative with the weakest trade union participation. Second, consensual orientation is very difficult to attain in a context of negative narrative resources where historical conflicts, conflictual communication and distrust between the stakeholders impede progress of the MSI. This was obvious in the Platform as well as the CSMs. In general, MSI design could not compensate for deficits concerning internal solidarity and narrative resources as they are deeply entrenched in the domestic context.

8. Conclusions

This article shed light on the participation of trade unions in MSIs by analysing three initiatives in the EU–Costa Rican pineapple supply chain. In line with previous studies on inclusiveness of

weaker actors in MSIs, the three initiatives confirm that trade unions can be procedurally allowed to participate but often fail to contribute substantially. While there was no substantial participation of unions in the case of the Platform, unions could express their position in the ETI-case. The Central American trade unions' substantial participation to the CSMs has been very limited, however, their procedural participation is on the rise in less formalised meetings.

Our main contribution lies in explaining trade union's participation by combining two dimensions: MSIs design and trade union power resources. First, the analysis of the MSIs design and implementation demonstrates that selection procedures can lead to the exclusion of local trade unions (representativeness), decision making rules to enhance equality and funding to enable participation of unions are rare (procedural fairness), and conflictual communication and distrust can also obstruct substantial participation (consensual orientation). Second, the analysis of union power resources highlights, on the one hand, how strong network embeddedness and better infrastructural resources are complementary to the design of MSIs for trade union participation. On the other hand, the lack of internal solidarity and adverse narrative resources of Costa Rican (pineapple) trade unions have a negative effect on their participation. MSI design could not compensate for these deficits as they are embedded in the local context and difficult to change.

This implies for practitioners involved in MSIs that improving the design of MSIs is necessary (see *infra* for recommendations) but not sufficient to enhance trade union participation. It stands or falls with the ability of unions to mobilize their resources and the willingness and commitment of all participants in the MSI to meaningfully engage in deliberation. Our paper calls for a continuous evaluation of MSI participatory processes (regarding representativeness, procedural fairness and consensual orientation) and strengthening of union power resources (internal solidarity, network embeddedness, narrative and infrastructural resources).

This paper has concentrated on the participatory processes in MSIs, however, additional research on the outcomes of such MSIs, especially concerning the promotion of labour rights, should be conducted. These outcomes should be scrutinised to know whether the MSI has ultimately strengthened weaker actors. Another interesting avenue for further research is the role of public actors in MSIs. Even though MSIs are often considered to be solely private mechanisms, governments are often involved as a creator or sponsor. Additional research on the (potential) influence of public actors, both in importing and exporting countries, would be useful in the assessment of power struggles at play in MSIs. In this light, a cross-country comparison with MSIs operating in labour repressive states embedded in different political economies can give a fuller account of how the institutional and political context influences opportunities for trade union participation in MSIs and how unions and MSIs deal with these context-specific challenges.

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Appendix A

Table A1. List of interviews, focus groups and observations.

Category	In-Text Reference	Date	Place	Category	In-Text Reference	Date	Place
Costa Rican unions (6)	CRU1	June 2015	San José	EU officials (3)	EU1	May 2015	San José
	CRU2	November 2016	San José		EU2	May 2015	San José
	CRU3	June 2015	San José		EU3	August 2018	Skype
	CRU4	June 2015	San José	EU civil society (12)	EUCS1	September 2016	Brussels
	CRU5	August 2018	Skype		EUCS2	November 2016	Brussels
	CRU6	June 2015	San José		EUCS3	March 2017	Brussels
Focus groups unions (3)	FG1	May 2015	Sarapiquí		EUCS4	October 2017	Brussels
	FG2	March 2016	Santa Rita		EUCS5	June 2018	Brussels
	FG3	June 2015	Limon		EUCS6	September 2018	Brussels
Costa Rican government (8)	CRG1	June 2015	San José		EUCS7	September 2018	Skype
	CRG2	May 2015	San José		EUCS8	September 2018	Skype
	CRG3	January 2016	San José		EUCS9	September 2018	Brussels
	CRG4	May 2016	San José		EUCS10	July 2015	Brussels
	CRG5	June 2015	San José		EUCS11	June 2017	Skype
	CRG6	June 2016	San José		EUCS12	February 2016	Brussels
	CRG7	June 2016	San José	Observations CSMs (8)	Transnational	June 2016	Tegucigalpa
	CRG8	June 2016	San Carlos		Transnational	June 2018	Brussels
Costa Rican business (5)	CRB1	February 2016	San Rafael		DAG to DAG	June 2016	Tegucigalpa
	CRB2	May 2015	San José		DAG to DAG	June 2017	Videoconference
	CRB3	May 2015	San José		EU DAG	March 2016	Brussels
	CRB4	January 2016	San Carlos		EU DAG	June 2017	Brussels
	CRB5	January 2016	San José		EU DAG	November 2017	Brussels
International Labour Organisation (ILO) officials (3)	I1	May 2015	San José		EU DAG	October 2018	Brussels
	I2	May 2016	San José				
	I3	June 2018	Geneva				

Appendix B

Table A2. Participation of trade unions in MSIs.

	ETI	Platform	CSMs
	Intermediate participation	Very low participation	Low participation
Procedural	- Representation through international ties with ETI member NGO and union	- Unions represented only 1% of participants initially	- 2 out of 7 trade union Domestic Advisory Group (DAG) members participate actively
	- Participation of local trade union in capacity building session cancelled by management	- Eventually withdrawal of trade unions	- All trade union federation secretaries listed, but not aware of membership - No trade union participation in first corporate social responsibility (CSR) seminar, more trade unions involved in second CSR seminar
	Intermediate substantial input	Very low substantial input	Low substantial input
Substantial	- Hosting visit to collect information and provide evidence	- Failed attempt to put freedom of association on the agenda	- No consideration given to denunciations about labour rights violations
	- Express concerns to ETI	- Labour rights removed from final action plan	- No input provided for joint working document on Decent Work and CSR
	- Failed meeting with management during capacity-building event		- Discussion of decent work issues during roundtables at second CSR seminar

Table A3. Criteria for design and implementation of MSIs.

	ETI	Platform	CSMs
Representativeness	Low representativeness	Very low representativeness	Low representativeness
	<ul style="list-style-type: none"> - International union and NGO act as bridge builders - Vague communication and late meeting invitation by management 	<ul style="list-style-type: none"> - Unclear selection criteria - Active resistance against trade union participation by the producers' side - Preference for high-level participants 	<ul style="list-style-type: none"> - Legal text refers to inclusion of economic, social and environmental stakeholders in a balanced way - Selection left to government, no clear criteria - Faulty invitation procedure - Unclear invitation for unions in 1st CSR seminar, proactive call for union participation in 2nd CSR seminar
Procedural fairness	Low procedural fairness	Very low procedural fairness	Low procedural fairness
	<ul style="list-style-type: none"> - Only ETI members can file complaint - Dependence on international ties with ETI members for funding and monitoring - Translation not covered by ETI - ETI funding for capacity building session - Unions exempted from fees 	<ul style="list-style-type: none"> - No moderator - No agreed decision making procedure - Voting about final action plan based on consensus with only business actors in the room - No funding for workshop on labour rights - Travel expenses difficult to overcome 	<ul style="list-style-type: none"> - No clear rules of procedure - Consensus based decision making but business in majority - No funding in Central America - New funding project for civil society participation - Funding to cover travel expenses of unions to CSR seminar
Consensual orientation	Low consensual orientation	Very low consensual orientation	Low consensual orientation
	<ul style="list-style-type: none"> - Trust-building at the core of ETI - Hostile communication attitude by Fyffes - Broken trust by call for action and advocacy campaign 	<ul style="list-style-type: none"> - Mediation by ILO failed - Producers veto the inclusion of labour proposals 	<ul style="list-style-type: none"> - Consensus based approach at the outset - Veto business side to publish joint working document - Denunciations not appreciated - Unions cautious for co-optation - Promotion of constructive collaboration in CSR seminar

Table A4. Criteria for union power resources.

	ETI	Platform	CSMs
Network embeddedness	- Strong international network (Coordinating Body of Latin American Banana and Agro-industrial Unions (COLSIBA), Bananalink, IUF)	- Limited ties among unions in the pineapple sector and their federations - No international network involved	- EU trade unions support Central American trade unions - Only high level representatives, no direct linkages with pineapple plantation unions
Internal solidarity	- In general, difficulties mobilizing workers to join union, lack of a collective identity among workers - No dense network of trade union representatives, weak levels of member engagement, limited knowledge of rights		
Narrative resources	- In general, historical heritage of struggle and frustration lie at the basis of the defensive narrative of trade unions - Competition with solidarist associations and employer repression feed into the conflictual stance of trade unions - Unions question the credibility of MSIs because of negative experiences and are cautious for co-optation		
Infrastructural resources	- Human resources are limited, lack of communication and negotiation skills required in MSIs - Union leaders have different priorities and need to divide time between core union activities and preparations for MSIs - Unions depend on membership fees or donors for funding of transport, computers and organisational infrastructure		

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3. Conclusions

In this final chapter of the dissertation, we first give an overview of the main findings of each article before addressing the sub-questions that underpin the main research question. These are answered through the findings presented in the main body of this dissertation, combined with complementary data and insights obtained and developed over the course of the doctoral research. Subsequently, the conclusions for each sub-questions lead to the formulation of general conclusions, addressing our main research question of whether EU trade arrangements can improve labour conditions in third countries. Overall, our conclusions aim to surpass the contribution of the individual articles by identifying the synergy of our research conducted over the last four years.

Finally, we end this concluding chapter by formulating some overarching reflections. Here, the main contributions of the dissertation to the existing literature are formulated, highlighting how political science and agricultural economics focusing on rural development can benefit from being addressed simultaneously. In addition, our most important learnings on conducting interdisciplinary research are given as well as the limitations of the study and suggestions for further research. Finally, in collaboration with Annelien Gansemans and based on our research findings, we formulate policy recommendations. These aim at improving the relevance and potential impact of EU social trade arrangements as well as labour governance in supply chains.

3.1 Overview findings articles

1. The EU and Fair Trade: hands-off?

In this book chapter, a conceptual framework was developed to explain and schematise the sometimes opposing ideological and philosophical meanings of Fair Trade. The framework consists of two axes: the first axis makes a distinction according to the extent of systemic change necessary to achieve Fair Trade, and ranges from a reformist (pragmatic and narrow) to a revolutionary (ideological and broad) view. The second axis distinguishes the required role of the government or public sector versus the market or private sector. In other words, this axis allows to determine whether interventionism or neoliberalism prevails.

Based on this framework, the EU position concerning Fair Trade was mapped. In essence, even though the EU briefly flirted with the revolutionary Fair Trade option through beneficial market access, export stabilisation and commodity protocols in the 1970s, the general neoliberal shift in Western politics in the 1980s and 1990s was also translated into EU trade policy. This neoliberal tendency became radicalised from the mid-2000s until today, resulting in an ever-greater emphasis on trade liberalisation and reciprocity. Even though Fair Trade

objectives, and especially those related to sustainable development, are still part of the EU's trade agenda, they follow a piecemeal approach: instead of questioning or challenging the prevalence of the neoliberal trade system, they tend to reinforce it.

2. Do labour rights matter for export? A Qualitative Comparative Analysis of pineapple trade to the EU

This article determined whether exporting countries complying with labour standards are rewarded with a larger export share to the European market. Through a Qualitative Comparative Analysis, we wanted to explain the relative importance or dependency on the EU market for pineapple exporting countries.

The analysis revealed two different paths, contrasting African and Latin American cases, in which the protection of labour standards mattered in a number of cases. However, it does not always play a role, and it is never a sufficient condition on its own for determining exports to the European market. Moreover, we showed that having a zero tariff is necessary for a large share of export to the EU, and labour standards protection can make a difference when the institutional quality is weak.

Accordingly, our findings call into question whether the image of the EU market as being very demanding in terms of labour standards coincides with the purchasing realities in the EU. Although the EU is explicit in its discourse on promoting labour standards, it appears to miss its intended leverage effect on actual export decisions and consequently fails to drive higher standards in sourcing sites.

3. Mapping variation of civil society involvement in EU trade agreements: A CSI Index

A Civil Society Involvement (CSI) Index was developed inductively in this article to map the extent to which civil society is included in the new generation of EU trade agreements.

This analysis showed that, although some form of template is used, large variation between the agreements exists. A distinction was made between three categories of CSI score: high (Canada, Korea), medium (Georgia, Moldova, Vietnam, Ukraine), and low (Central America, Singapore, Peru-Colombia, Ecuador). The outcome also revealed interesting nuances within the categories listed above.

4. Explaining variation of civil society involvement in EU trade agreements

This article further explored the variation identified in the previous article. We found that, while none of the explanations can fully and exclusively account for CSI variation, the 'third country domestic resonance' explanation turns out to be most powerful. In other words, the more civil society is already involved in the domestic political system of a partner country, the more ambitious civil society provisions in the EU trade agreement will be.

In addition, a more detailed study of the clusters showed that time, the 'EU experience' explanation, also matters: first, an increase in civil society interaction with governmental actors can be observed. Second, civil society provisions in the recent agreement with Vietnam are

more ambitious than would be expected from the domestic context, due to learnings from the implementation of existing agreements.

5. Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements

In this article, we aimed to assess whether the civil society mechanisms in EU trade agreements are used as an instrument to co-opt and silence civil society. A survey conducted with members of the European Domestic Advisory Groups, complemented with interviews and non-participatory observation, elucidated their experiences in –and perceptions of– the civil society mechanisms.

The analysis of the data revealed two insights: first, there is no clear evidence of co-optation, even though non-profit actors have adopted a constructive approach. Although they have decided to participate in the mechanisms, they nevertheless remain critical about the impact of free trade and free trade agreements on sustainable development. This is especially true for trade unions. Hence, they are facing the insider-outsider dilemma, walking on a tightrope between legitimising free trade and obtaining results for the cause they represent and are.

Second, the survey results showed a discrepancy between business actors and non-profit organisations. Business groups are generally (very) positive about free trade, the EU trade agreement and the civil society mechanisms. They recognise that the mechanisms play a role in legitimising the EU trade agreements, while at the same time providing opportunities for discussion with officials and impacting on decision-making. Yet, there is a risk that the civil society mechanisms further reinforce the existing asymmetric power relationship between business and non-profit organisations when it comes to trade policy influence, rather than balancing them in favour of sustainable development.

6. Trade unions in multi-stakeholder initiatives: what shapes their participation?

The objective of this article was to assess trade union participation in MSIs, while also explaining the factors that enable and constrain their participation. We found that the three criteria (representativeness, procedural fairness and consensual orientation) analysed for the design and implementation of the MSIs, did not enable notable substantial participation. Moreover, trade union power resources also played an important role. Here, strong network embeddedness and better infrastructural resources had a positive impact, whereas fragmented internal solidarity and unfavourable narrative resources constrained trade union's participation. As such, the analysis confirms business domination and weak bargaining power of unions in the MSIs.

3.2 Findings RQ1: How do EU trade arrangements promote the improvement of labour conditions in third countries?

To answer our first sub-question, we will first describe the different EU social trade arrangements we have encountered throughout our research. These also represent the array of existing EU initiatives to promote the improvement of labour conditions in third countries. Subsequently, their objectives, governance and enforcement will be analysed. Our research mainly focused on the EU bilateral trade agreements and their TSD chapter. To put the features of this bilateral instrument in perspective and allow a certain degree of comparison, it will be contrasted to the EU's unilateral social trade instrument (GSP+) and hybrid initiatives. The difference in the extent to which each instrument was researched is visualised by different shades of grey in table 4.

3.2.1 Instruments

Article 1 contains an overview on what the EU has done and is doing to counter perverse effects of trade and how it uses trade as an instrument to foster sustainable development. In the EU trade-labour linkage, three instruments of EU social trade arrangements can be discerned: the first is a unilateral regulation, namely the GSP+. This special incentive arrangement for sustainable development and good governance is part of the broader EU GSP, which grants preferential tariff treatment to developing countries. GSP and GSP+ were established by means of an EU regulation, which sets the criteria for granting beneficial market access. Since the first reference to a possible suspension due to forced labour in the GSP regulations of 1994, several subsequent regulations have defined the eligibility criteria for, and functioning of, the instrument. Over the years, GSP+ has only been applied for by, and granted to, a limited number of countries.

The second arrangement is a bilateral agreement. The latest generation of EU trade agreements, launched in 2011, has introduced a chapter on TSD chapter. Contrary to the unilateral regulation determining the GSP(+), the content of this chapter is the result of negotiations between the EU and its trade partner (see article 3 & 4). Several former GSP+ beneficiaries have now concluded a bilateral trade agreement with the EU.

The third arrangement is a wider and more diversified type of instrument, in which both public (EU or EU Member States) and private actors cooperate in hybrid initiatives to advance labour conditions. In our research on the EU-Costa Rican pineapple trade, we have come across the following examples: the Ethical Trade Initiative (ETI), the National Platform for the responsible production and trade of pineapples (Platform) and workshops on Corporate Social Responsibility (CSR) (article 6). The CSR workshops have been organised in the context of the implementation of the TSD chapter of the EU-CA AA. However, we consider them to be hybrid initiatives. This is because they are not a formal part of the TSD chapter and are created on an ad hoc basis and in collaboration with both private Central American organisations and international institutions.

3.2.2 Objectives

The objective of an arrangement refers to its substantive content concerning the promotion of improved labour conditions. The labour provisions in trade agreements with countries that have already ratified the ILO CLS, encompass the commitment “to respect, promote and realise the ILO CLS as well as the exchange of information on the situation and advancements of other ILO Conventions”. However, TSD chapters in EU bilateral agreements with countries that have not ratified all the CLS (e.g. Singapore and Vietnam) specify these countries should “make continued and sustained efforts towards ratifying”. The ratification of CLS is thus not a precondition for the conclusion of an EU FTA. Van den Putte et al. (2013) showed how the labour provisions included in the latest generation of EU trade agreements have widened and deepened compared to previous generations. The labour provisions in earlier EU agreements, such as the EuroMed agreements, refer to social cooperation and dialogue on social matters. However these provisions are limited to issues on the social protection system and enhancing the health coverage system, and are mainly described in technical terms.

To be granted beneficial market access under GSP+, countries have to ratify and effectively implement the core international conventions on human and labour rights, environmental protection and good governance. Before concluding a bilateral trade agreement with the EU, the Central American countries were GSP+ beneficiaries. The ILO CLS had already been ratified by the Central American countries in the 1950s and 1960s (except for El Salvador, which ratified the ILO conventions on Freedom of Association and Collective Bargaining (FACB) in 2006, mainly due to US pressure in the context of the CAFTA-DR agreement), so credit concerning their ratification should not be given to the EU. Nevertheless, it shows that the inclusion of the ILO CLS in their trade relations with the EU was not new for the Central American countries. Moreover, the EU is said to have tried to include more labour provisions, beyond the core labour standards, to the TSD chapter (interview 12). This intention was not realised as the final scope of the labour provisions in the TSD chapter is the same as in the GSP+.

The three hybrid initiatives analysed in the EU-Costa Rican pineapple trade (ETI, the Platform and CSR workshops) have different labour objectives. ETI has developed its own Base Code. It was negotiated and agreed by the founding members (trade unions, NGOs and business) and reflects the most relevant ILO conventions, including FACB (ETI, 2019). The Platform, which was assembled to develop a national strategy to improve the sustainability performance of the Costa Rican pineapple production, does not refer to the ILO CLS (see article 6). On the contrary, the national plan, which was negotiated between the participants (including officials of the Costa Rican Ministry of Agriculture as well as Energy and Environment; excluding trade unions who had left the Platform), contains the commitment to promote the Costa Rican alternative to trade unions (namely *solidarismo* and permanent committees) internationally (PNUD Plataforma Piña Costa Rica, 2015, 2016). Finally, the CSR workshops focused on the labour aspect of CSR. To that end, the principles and guidelines for responsible value chains developed by the ILO (on Decent Work) and OECD (Guidelines for Multinational Enterprises)

were put forward. These three examples demonstrate the variety of labour objectives within hybrid initiatives. Whereas ETI uses the ILO CLS as a starting point, the Platform wants to promote the Costa Rican alternative model of workers representation, which is not recognised by the ILO. In addition, the CSR workshops refer to both ILO and OECD principles.

3.2.3 Governance

Turning to the governance of the EU trade arrangements, This section will describe how the objectives are implemented and how this implementation is monitored. The implementation of the TSD chapter's labour provisions relies on the signatory parties. It is up to the public actors to "respect, promote and realise the ILO CLS" through their national labour law and labour policy, using and creating public tools to implement the CLS.

The implementation of the labour objectives in EU trade agreements is monitored by two institutional mechanisms established in the TSD chapter: the first mechanism is an intergovernmental body, namely the Board on Trade and Sustainable Development in the EU-CA AA, in which high level officials from each party participate. They are obliged to meet within the first year that the trade agreement enters into force and after that when necessary. During these meetings, which last one to two days in the case of the EU-CA AA, each party gives an overview on relevant changes in their legislation. Moreover, country-specific issues related to sustainable development (including labour) are discussed (interview 68). Finally, in order to report on the implementation of the TSD chapter, a summary of the meetings is shared with civil society in the subsequent meeting.

The second monitoring mechanism involves civil society of all partner countries. Their set-up and functioning, and the variation between the different EU trade agreements, is described in detail in article 3. The main features are (1) the establishment of a domestic advisory group (DAG), in which representatives of three constituencies (labour, environment and business) of each party participate; (2) the organisation of yearly transnational meetings, where the members of the DAG and/or other actors of both the EU and its trading partner meet annually; (3) interaction between these two meetings and the intergovernmental body.

This civil society mechanism, and its potential in terms of improving labour conditions, will be extensively discussed in the subsequent section answering the second research question. However, three comments should be made concerning the monitoring role of the civil society mechanism. First, there is a lack of clarity concerning the purpose of the mechanism (see Orbie et al, 2016 in the annex). Even though it is created under the heading "Institutional and Monitoring Mechanism" in the TSD chapter, the DAG's legal 'task description' includes "expressing views and making recommendations", whereas the transnational mechanism "shall conduct dialogue" and "express its views and opinions". However, there are different opinions among the participants on how this should be put into practice. Some claim denunciations about labour rights violations can and should be made during the meetings

(interview 84 & 87), whereas others assert they should focus on making recommendations (interview 76). Similarly to the last position, DG Trade also favours a “positive agenda” (interview 12, 68, 81; observation 12). Moreover, in addition to these monitoring purposes, the creation of these meetings can also be understood as a way to legitimise the contested trade agreements (see article 5). Civil society could be co-opted by tempering their critical and transformative nature, enticing them to work from within the agreements.

Second, accountability issues have arisen from the interaction foreseen between civil society and the intergovernmental body. In the case of the EU-CA AA, there is no formal feedback mechanism in which the intergovernmental body reports on how the civil society’s input has been considered or put to use. The civil society’s statement is shared during the last meeting of the series in which civil society meets the intergovernmental board. In these meetings, the governments take note of the declaration and no substantive follow up has been given so far. This has led to demotivation and discontent with the participating civil society actors. To avoid the continuation of this dialogue of the deaf, the EU DAG, supported by the Central American DAGs, wrote a letter to DG Trade to, among other requests, increase the interaction with the intergovernmental board by securing a separate meeting (not foreseen in the TSD chapter) gathering the EU and Central American DAGs and the intergovernmental board during the next series of meetings in June 2019. In general, differences exist between the various EU free trade agreements on this accountability issue. CETA, the EU-Canada trade agreement, for instance prescribes that the intergovernmental board “shall report annually on the follow-up to those [the transnational meeting’s] communications”. Regarding the EU-Korea agreement, the legal text shows limited ambition concerning the interaction between civil society and governmental actors (article 3). Yet, in practice the order of the meetings ensures that civil society’s input feeds into the discussions of the intergovernmental board. Contrary to the Central American agreement, civil society meets before, and not parallel to, the intergovernmental meeting, and their report is then integrated in the intergovernmental meeting (interview 87).

Third, it should be emphasised that, while most common definitions distinguish civil society from the economic sphere (Spurk, 2010), the EU includes professional associations in its interpretation (European Commission, 2001). These associations represent the interests of an industry and could therefore also be considered as belonging to the economic sphere. Similarly, in the civil society mechanisms established in the EU bilateral trade agreements, business organisations and other economic actors are included in the monitoring. Article 5 shows how this might be problematic due to the discrepancy between the perception of rather positive business groups and more critical non-profit organisations in the EU, which could reinforce the existing asymmetric power relationship. This risk has been confirmed in article 6 concerning the power dynamics at play in the Central American civil society mechanisms.

In contrast to the EU bilateral instrument, which involves civil society in its monitoring and therefore showcases hybrid characteristics, GSP+’s governance is focused on public actors. The

beneficiary country is responsible for the implementation of the conventions and since the 2012 GSP reform it also carries burden of proof on beneficiaries to demonstrate compliance (European Commission, 2018d). The European Commission in turn keeps a scorecard per country, which includes information based on reports of international institutions such as the ILO. Interestingly, since the 2012 reform, other reliable sources of information (including civil society and social partners) can be consulted. However, Portela (2019) found that the establishment of GSP+ did not lead to an intensification of dialogue between civil society and the beneficiary government.

The governance of hybrid instruments shows variation. Whereas ETI used to depend considerably on UK government in its early stages (mainly for its endorsement and financial/operational facilitation), the UK government's role is now 'decentred' (Knudsen & Moon, 2017). ETI is currently implemented and monitored by private actors, even though it still lends the public organisational structure of regional and country offices. In addition, the UK government still has an observer status in the ETI Board. In contrast, the Platform is governed completely differently. Once the action plan was agreed upon, it was institutionalised as a national decree. In 2017, a national follow-up committee was established with twelve representatives from different ministries, business and civil society organisations (except for trade unions) to monitor the implementation of the action plan (National Initiative to Pineapple Responsible Production, 2018). The Monitoring Committee has a technical secretariat located at the Ministry of Agriculture. Finally, the CSR workshops were implemented, or organised, by the relevant EU Delegations, in collaboration with a local private organisation specialised in CSR. In Costa Rica, this organisation is also member of the national DAG. Due to the nature of the workshops, monitoring is not an issue. Interestingly however, participation to the workshops has been monitored by the EU DAG members, as barely no trade unions were involved in the first workshop. Due to reiterative pressure by the EU DAG, this issue was addressed in the subsequent meeting (see article 6).

3.2.4 Enforcement

The last aspect of EU trade arrangements to be described and analysed is their enforcement. Complaints on labour (or other sustainable development) issues are not covered by the bilateral trade agreement's general dispute settlement mechanism. Instead, TSD chapters have their own mechanism, which consists of governmental consultation, and –if no mutually satisfactory solution is found– the establishment of a panel of experts. However, there is no provision for sanctions if the panel's recommendations are not followed up. Trade preferences will not be suspended and no other form of enforceable leverage is foreseen. In sum, this enforcement mechanism has no 'teeth'. The design of this aspect of the EU soft or promotional approach, often contrasted to the US hard or conditional approach, has been criticised by academics, activists and Members of the European Parliament alike (Cross, 2017; Harrison et al., 2018; Marx et al., 2016; Rodríguez-Piñero, 2018). Even though EU trade commissioner Malmström has repeatedly assured that the TSD chapter is enforceable, these voices are

sceptical about the potential of its dispute settlement mechanism. After a reflection exercise in 2017-2018, the Commission acknowledged the need to be more assertive concerning the enforcement of the TSD chapter (European Commission, 2017a, 2018c). Accordingly, and after continuous pressure by European civil society, DG Trade for the first time activated government consultations with South Korea over labour rights violations in December 2018 (European Commission, 2018b). This being said, the EU will keep on favouring its soft approach, focusing on dialogue and cooperation to enforce the sustainable development commitments in its trade agreements.

Conversely, the unilateral arrangement GSP(+) employs a hard approach, foreseeing the withdrawal of beneficial market access in case of serious and systematic violations of the conventions. GSP+ is thus more stringent than EU trade agreements, as market access is conditional on ratification and implementation. Nevertheless, this conditionality has rarely been put into practice so far. In line with its recent resolution to enforce its social trade instruments more assertively, the EU has launched the procedure to temporarily suspend Cambodia's preferential access in February 2019 and has also stepped up its engagement with Myanmar, both GSP beneficiaries (European Commission, 2019; Malmström, 2018). In general, EU decisions to make use of its enforcement mechanisms are considered to have predominantly been driven by political considerations, rather than human and labour right violations (interview 87).

The enforcement of hybrid arrangements varies according to their design. However, they typically rely on private actors through third-party auditing, civil society watch dogs and ethical consumerism. Overall, governments have been particularly reluctant to employ their regulatory capacity to ensure the enforcement of hybrid initiatives (Knudsen & Moon, 2017). ETI has developed its own disciplinary procedure to enforce membership obligations (2009). As discussed in article 6, the international importer and distributor of tropical products, Fyffes has been accused of labour rights violations in its subsidiaries' pineapple and melon plantations in Costa Rica and Honduras. Due to the lack of progress in Honduras, Fyffes has been suspended from ETI since May 2017, causing the company reputational damage (interview 85; Moyo, 2017). The Platform's action plan is currently being implemented and monitored by a committee comprising public and private actors. However, no concrete enforcement mechanism is foreseen in case of non-fulfilment. This being said, since the action plan does not mention any reference to Freedom of Association and Collective Bargaining, this has less importance for our research.

3.2.5 Conclusion RQ1

Concerning the EU social trade instruments, we see an evolution from the use of the unilateral regulation GSP+ to bilateral agreements. Technically, this is due to changes in the GSP+'s eligibility criteria. However, several authors have criticised the EU for subordinating normative goals to its own economic interests (Langan, 2014; Siles-Brügge, 2014). Based on our

research, it is difficult to make generalisations concerning hybrid initiatives due to their diversity. Some have a permanent structure, while others are temporary or have an undefined future. This being said, there is an increased openness from the EU and other state actors to collaborate with non-state actors for the advancement of labour conditions.

Table 4: Overview EU social trade arrangements

(the different shades of grey reflects the extent to which each instrument was empirically researched, dark grey = most extensive)

	EU social trade arrangements		
	GSP+	TSD chapter	ETI, Platform, CSR workshops
Instrument	Unilateral regulation	Bilateral agreement	Hybrid initiatives
Objective	Ratification & implementation ILO CLS	Commitment by Signatories to uphold ILO CLS	Initiative-specific - ETI: ILO CLS used as starting point - Platform: promotion of <i>solidarismo</i> - CSR workshop: ILO & OECD guidelines
Governance	By public actors Pre-reform: limited monitoring Post-reform 2012: increased monitoring (+ input civil society possible)	By public & non-state actors: 1. Governmental meeting 2. Civil society meetings: domestic & transnational 3. Government & transnational civil society meeting	Mainly non-state actors - ETI: by private actors - Platform: implementation decree, cooperation public-private (no trade unions) - CSR workshop: by public (EU Delegations & DG Trade) & private (local CSR business organisation)
Enforcement	Hard: potential withdrawal preferential market access	Soft: through dialogue Dispute settlement mechanism: Governmental consultation & Panel of Experts	Initiative specific: - ETI: hard: own disciplinary procedure, suspension members - Platform: not foreseen (labour issues not involved) - CSR workshop: does not apply

The ILO CLS play a central role in the objectives of EU social trade initiatives. Nevertheless the case of the pineapple platform shows this privileged place is not always guaranteed. In

addition, whereas the ratification of the ILO CLS is a requirement for GSP+ market access, it is not for the conclusion of EU bilateral trade agreements.

We noted considerable distinctions in the governance of the different instruments. In the case of GSP+ and the TSD chapter, states are responsible for the implementation of the labour commitment. In contrast, non-state actors have the lead in hybrid initiatives. Turning to the monitoring, there is a difference between the GSP+, which barely involves civil society, and the bilateral trade agreements, in which it is granted a seemingly important role in the monitoring of TSD chapter implementation. Hybrid instruments by definition involve civil society. However, in the case of the Platform and the first CSR workshop, we noticed that this does not guarantee the inclusion of trade unions.

Finally, the enforceability of the instruments differ in the sense that GSP+ foresees a hard enforcement, whereas the bilateral instrument has a softer approach based on dialogue. In both cases the EU has acknowledged the need to be more assertive and has started to show signs of practicing what they preach. The hybrid instruments discussed represent the two extremes in which ETI has set up a hard approach through its own disciplinary procedure, whereas the Platform does not envisage any concrete enforcement at all. This being said, all enforcement efforts have been criticised as being too politically driven, permissive or slow.

In sum, no single straight forward evolution can be discerned as the EU trade arrangements remain multifaceted. However, it can be said that overall, civil society involvement has gained importance and that the implementation of the instruments has become more flexible. With flexible we aim to describe the ad hoc initiatives conceived to address the design or implementation flaws of the arrangements.

3.3 Findings RQ2: How relevant is this approach to the improvement of labour conditions in third countries in general?

Through the second sub-question, we want to analyse the relevance of EU social trade arrangements for the improvement of labour conditions in third countries to understand the potential impact of these arrangements. A working definition of *relevance* was developed in the introduction of this dissertation:

For EU social trade instruments to be relevant, they should be appropriate to the needs of workers in third countries, as well as an essential element of a plan capable of achieving improved labour conditions.

In what follows, each substantial feature, clustered around ‘workers’ needs’ and ‘essential element’, of this working definition will be assessed through the findings presented in the articles. These findings will be complemented with additional empirical data or information whenever pertinent.

3.3.1 Appropriate to the needs of workers

To assess the extent to which EU social trade agreements enable the empowerment of trade unions, and are therefore relevant to the improvement of labour conditions in third countries, we have adapted an analytical framework conceived by Alsop et al. (2006) (see Figure 4). This framework assesses empowerment by connecting the agency of an individual or group to the opportunity structure in which it operates. Agency refers either to an actor's degree of involvement in a course of action or to the scope of actions that a person could be involved in bringing about (Drydyk, 2013). It is linked to the ability and capacity of that actor to choose and act. Opportunity structure comprises the institutional context within which actors operate, which influences their ability to transform agency into action (Alsop et al., 2006). Opportunity structures, establishing the 'rules of the game', can be either formal (i.e. rules, laws, regulatory frameworks) or informal (i.e. unofficial rules, cultural practices, norms and values).

Together, agency and opportunity structure form a dynamic process in which their interaction has the potential to improve the capacity of individuals or groups to act and make effective choices. This process thus influences the degree of empowerment. Alsop et al. (2006) identify three degrees of empowerment: whether an opportunity to make a choice exists (existence of choice), whether a person or group actually uses the opportunity to choose (use of choice) and whether the choice brings about the desired result (achievement of choice). The degree of empowerment in turn leads to a desired outcome, ideally a transformed power relation. Through the use of double arrows, the framework highlights the iterative relationship between agency and opportunity structure, as well as between the degrees of empowerment and both agency and opportunity structure.

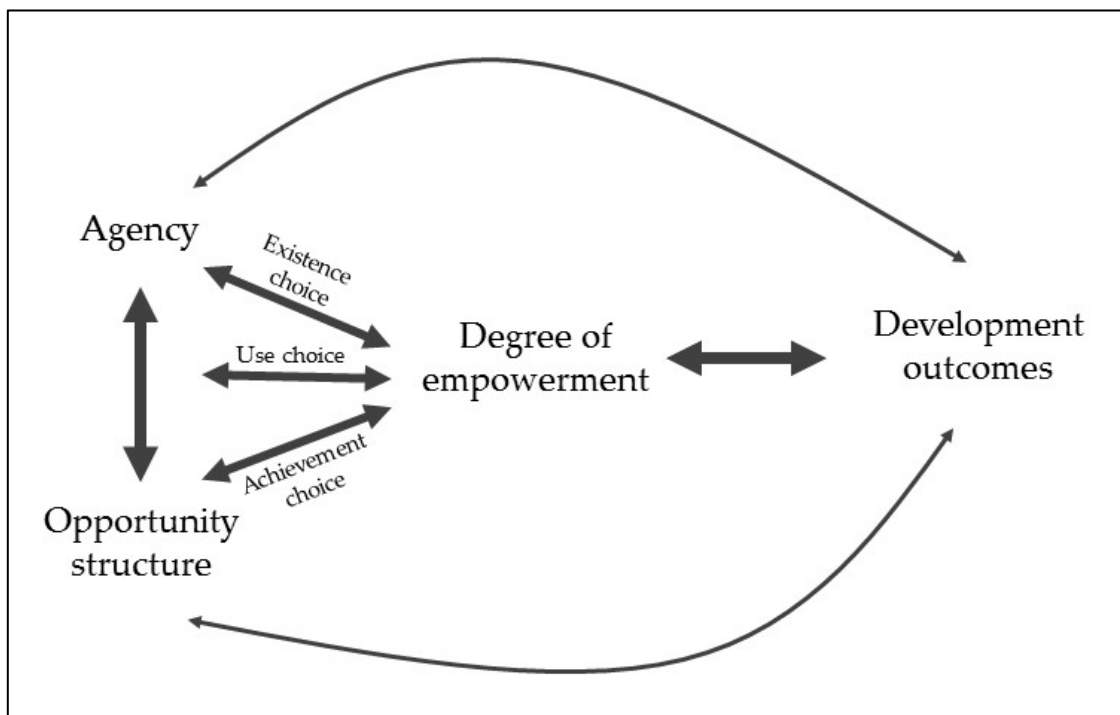


Figure 4: Analytical framework by Alsop et al. (2006): the relationship between outcomes and correlates of empowerment

In line with the research approach set out in the introduction, the appropriateness of EU social trade arrangements to the needs of workers will be assessed through their empowerment of trade unions. We therefore want to examine whether the civil society mechanisms established in the TSD chapters of the latest generation of EU free trade agreements empower trade unions. These findings will then be compared with the unilateral and hybrid EU trade arrangements.

Applying this framework to our research context, the following process is implied (see Figure 5): Costa Rican trade unions' agency will be assessed by analysing their asset endowment (Alsop et al., 2006) or power resources (Lévesque & Murray, 2010), namely their resources to use economic, social, and political opportunities. In addition, the existing opportunity structure defining the rules of the game of industrial relations in Costa Rica will be mapped. Attention will be paid both to the formal and informal structures. The interaction of trade unions' agency and the opportunity structure can then lead to three degrees of empowerment: first, are there opportunities for trade unions' to make their voice heard? Second, if so, did trade unions attempt to participate? Third, did they expressed their concerns and were they listened to? Achieving all degrees of empowerment could contribute to changing power structures in Central American and Costa Rican industrial relations, which in turn might improve worker labour standards, as worker's interests are well-represented and considered.

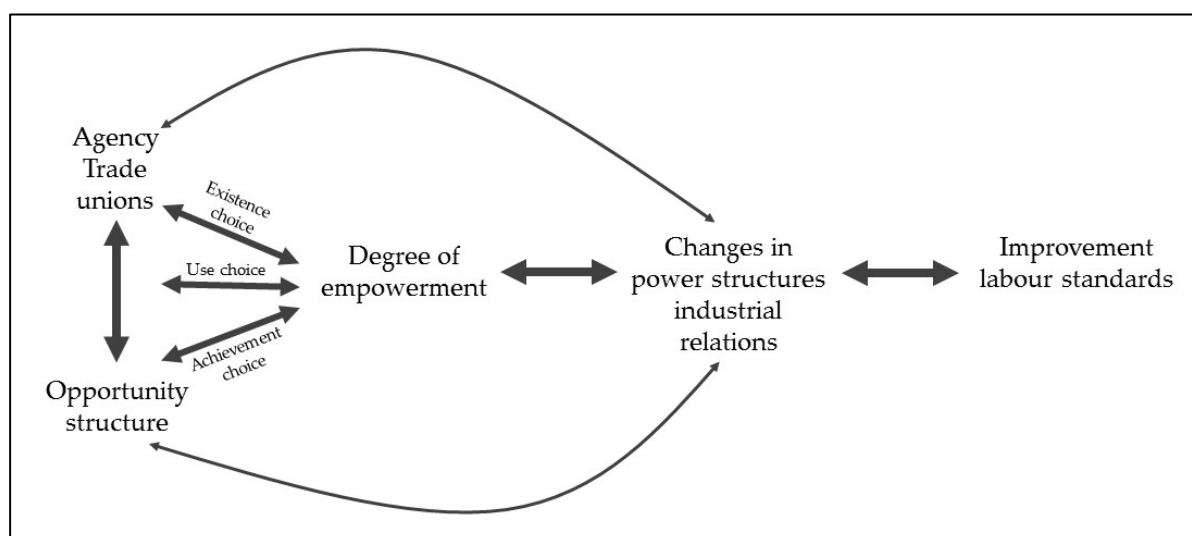


Figure 5: Adapted analytical framework by Alsop et al. (2006): the relationship between the improvement of labour standards and the correlates of trade union empowerment.

Based on our findings in the articles and complementary empirical research, the following section will discuss the state of the agency and opportunity structure of trade unions in Costa Rica. Furthermore, we will also look into the influence of civil society mechanisms in EU bilateral trade agreements and whether they have led to empowerment in this regard.

Agency

Alsop et al. (2006) define agency according to an actor or group's psychological, informational, organisational, material, social, financial, and human assets. Similarly, Lévesque and Murray

(2010) identify four types of power resources that are important to trade unions: internal solidarity, network embeddedness, narrative resources and infrastructural resources. Given the substantial overlap between both understandings of assets and resources, and given the fact that Lévesque and Murray's typology was developed to determine trade union capacity, their interpretation will be maintained. The power resources of trade unions in the Costa Rican pineapple industry are discussed in article 6. In our case study, we found that trade union reinforcement through multi-stakeholder initiatives is the most feasible for the resources: network embeddedness, which concerns the horizontal and vertical links with other unions, community groups and social movements, and infrastructural resources, referring to material and human resources and their allocation.

These two resources have indeed been addressed through the civil society mechanism of the EU-CA AA. The network embeddedness has mainly been driven by the EU DAG trade union members, who have been clear since the beginning of the meetings that their own participation aims at the reinforcement of trade unionism in Central America and the improvement of labour conditions in the region. As a consequence, several initiatives are strengthening the Central American trade unions' network embeddedness resource. First, the European trade unions have been using their existing Central American contacts to continuously stimulate their counterpart's participation in the different civil society meetings, both through informing them of upcoming meetings as well as insisting on their attendance. Second, the transnational meetings provide a useful occasion to coordinate between the European and Central American trade unions on their position on the implementation of the EU-CA AA as well as other matters related to their (inter)national activism. The transnational meetings in Central America have for example been combined with other regional trade union meetings and fact finding missions. Third, the civil society meetings have exposed the weak, nearly non-existent, coordination among Central American trade unions. Assisted by European trade unions, the *Consejo Sindical Unitario*, grouping around 30 Central American and Caribbean trade unions, federations and confederations, has recently started to address this situation. Its technical secretary strives for an increasingly coordinated and harmonised trade union participation in the Central American DAGs (interview 78 & 84). These concrete examples demonstrate how the existence of the civil society mechanisms has stimulated the improvement of Central American trade unions' network embeddedness. This being said, these efforts still need to be consolidated, through time and action, to ensure a durable effect. In addition, we did not see a significant trickle-down effect to lower levels of trade union organisation, and certainly not to the company or plantation level.

Concerning the infrastructural resources, travelling costs to attend the meetings have been raised as an important barrier, as they impede the participation of less affluent civil society participants. Even though there is a near unanimous agreement that this issue should not only be addressed by the EU alone and that Central American countries should also make a contribution, there are no indications that the latter can or will make budgets available for this purpose. In early 2019, the EU launched a three-year project to support the implementation of

TSD chapters through consistent, visible and increased participation of civil society (European Commission, 2018e). If partner countries accept EU support, the project will help to organise two DAG meetings per year in those countries. In addition, the project covers the travel costs of three non-EU DAG members for meetings in both their own countries as well as in Brussels. However, since the initiation of this project, no EU-Central American transnational meeting has taken place. We can therefore not confirm whether this financial support has positively affected trade union participation. Even though this initiative might appear of minor importance and does not change the Central American trade union's structural financial circumstances, it is considered an attempt to reinforce trade unions' infrastructural resources, as it enables participation to the meetings.

In general, there are some positive indications for trade union agency. However, only the network embeddedness is evolving in a durable manner. This is because ties between European and Central American trade unions are growing stronger and Central American trade unions are starting to coordinate among themselves. The stimulus by the EU to improve the infrastructural resources is limited and it is a short-term initiative. The other two resources, internal solidarity (assessing collective cohesion and deliberative vitality within trade unions) and narrative resources (values and stories providing shared understandings and frame the way union members think and act) are neglected. Not surprisingly, these two resources touch upon the very core of trade union organisations and are thus more difficult to change, especially by external international actors. Costa Rican trade unions in the private sector, and Central American trade unions in general, suffer from structural weaknesses through low unionisation rates and an overall anti-union context. This context is described in the introduction of the dissertation and, confirming the iterative relationship between agency and opportunity structure, will be further addressed in the next section.

Opportunity structure

The opportunity structure comprises the institutional context that shapes and constrains human interaction and individual choices through establishing formal and informal 'rules of the game'. Applied to our research context, we are mainly interested in how these institutions influence trade union existence and activity. As described in the introduction, the formal Costa Rican opportunity structure has created a rather constraining environment for the functioning of trade unions. The Costa Rican labour code –especially given the recent reforms– could provide a more conducive setting for trade union activity. Yet, this is currently still offset by legally permitted alternative solidarity associations, *solidarismo*, and the lack of formal institutions that foster (tripartite) social dialogue. The fragmented and weak social dialogue in Costa Rica is also the reason why the OECD (2017) has recommended to strengthen tripartite bodies and to create an 'Economic and Social Council'. While trade union discrimination by private employers persists in Costa Rica, labour inspection has been inadequate and the judicial processes too cumbersome. The latter has been modernised by the recent labour law reform, which has become a silver lining for the enforcement of trade union rights.

The informal context is also hostile to trade unionism. The practice of *solidarismo* prevails and is actually preferred by workers, which undermines independent trade union efforts. Moreover, very negative public opinion concerning trade unions remains in Costa Rica. This public opinion is fuelled by employers and an important sector of the Catholic Church. In addition, trade union activities from public Costa Rican trade unions, which are much stronger than those from the private sector, are often considered as illegitimate by non-affiliated citizens and contribute to the poor reputation of trade unions in general.

These formal and informal structures have had important consequences on trade unionism in Costa Rica. A better understanding of these structures clarify the trade unions' weak power resources internal solidarity and narrative resources. It also explains the low number of collective agreements in the Costa Rican private sector.

The TSD chapter of the EU-CA AA is a recent addition to the Costa Rican formal opportunity structure. Since we have already discussed the limited challenging exchanges in the intergovernmental board, we will focus on the civil society mechanisms established in this chapter. Alsop et al. (2006) explain how interactions between formal and informal institutions, which might result in tensions, are required for shifting power. In what follows, we will assess whether the TSD chapter in the EU-CA AA and its civil society mechanism as a formal institution influence the opportunity structure for trade unions. This will be determined through the degrees of empowerment and interplay between agency and opportunity structure as presented in Alsop et al.'s (2006) analytical framework (see Figure 4 and 5).

Degree of empowerment

Empowerment considers a person's or group's ability to choose and to act. The first degree of empowerment is therefore whether there exists a choice. In the case of the civil society mechanism established in the EU-CA AA, this degree of choice corresponds with the existing opportunities for trade unions to participate and make their voice heard. The obvious answer to this question would be positive, as the civil society mechanisms are of course established as a platform for civil society involvement, including trade unions. However, a closer look at the legal provisions establishing the mechanisms as well as at their implementation in practice, gives a more nuanced answer. Article 3 shows how there is a difference in the level of civil society involvement foreseen in the texts of the EU bilateral trade agreements, even though the legal provisions establishing the civil society mechanisms are based on the same template. In our comparative analysis, Central America, together with the Andean countries and Singapore, is featured in the lowest category. In addition, article 4 explains this variation by concluding that the level of civil society involvement in an EU trade agreement reflects the domestic practice of civil society participation in the trade partner. In other words, if civil society participation in a third country is low, civil society involvement in the EU trade agreement with that country will also be low. We should however indicate that Costa Rica holds a special position in this conclusion, as it does not score low in overall civil society participation. On the contrary, the country scores very well on political and social integration

in the Bertelsmann Stiftung Transformation Index (2016) used in article 4 (8,3 out of 10, 10 being the best score). This is further confirmed by the Civicus Monitor (2018), which evaluated the Costa Rican civic space as 'open'. The low civil society involvement in the EU-CA AA thus reflects the lowest common denominator among the Central American countries. This being said, for trade union participation the low level of involvement in the civil society mechanism is not surprising and reflects the domestic condition of social dialogue. In sum, even though the choice exists, the legal provisions of the trade agreement establishing this choice (i.e. the civil society mechanisms) affect its existence negatively.

The second degree determines the use of choice, namely whether the trade unions decided and attempted to participate to the civil society meeting. Again, our research draws a mixed picture. On the one hand, governmental and business actors informed us that trade unions were invited but did not want to participate (interview 12 & 50). On the other hand, trade unionists complained they were not invited (interview 23, 51, 63). Concerning trade union participation in the domestic mechanism, article 6 explains how the selection procedure to become a member of the Costa Rican DAG, or any other Central American DAG, is flawed. In addition, there is little awareness of the mechanism's existence in general. Even for the transnational meeting, which is more open –albeit not public– than the domestic mechanism, invitations have not been circulated widely. In addition, we observed that a number of (Honduran) trade unions attended the transnational meeting (in Honduras) to test the water and form a first impression of the civil society meetings. It would therefore be too simplistic to state that trade unions do not want to participate.

However, at the same time, certain trade unions are not interested in participating, while others are reluctant to do so. The disinterest stems both from a lack of belief in the idea that civil society mechanisms could matter for labour conditions, especially since the TSD chapters have no enforcement mechanism (interview 66), and from a lack of awareness on the potential harmful consequences of free trade on the Central American and Costa Rican society (interview 82). The reluctance to participate relates to the insider-outsider dilemma discussed in article 5. Trade unions, along with other civil society actors, hesitate to take part in the implementation of a cause they do not support. Article 5 concludes that in the case of the EU DAGs there is no evidence of co-optation even though civil society is aware of the risk that their participation could serve (solely) to legitimise the trade agreement. The findings also warn for the discrepancy in the perception of non-profit and business actors, which appear to reinforce an existing power imbalance. Even though the perception of Central American or Costa Rican civil society was not assessed in the same systematic matter, our interviews indicate an even wider divide between business and non-profit sector and a stronger distrust towards the civil society mechanisms.

Finally, the third degree of empowerment is the achievement of choice. This would entail the substantial participation of trade unions. In other words, it implies that they would attend and contribute substantially to the civil society mechanism created in the EU-CA AA, and that their

input would be considered. In article 6, we explained that this has not yet been the case for Central American trade unions. There are failings in the achievement of the first and second degree, and given the limited agency and constraining opportunity structure, this last degree of empowerment has not been accomplished. Correspondingly, we did not observe changes in power structures to the benefit of trade unions and can therefore conclude that the civil society mechanisms have not empowered Central American, and in particular Costa Rican, trade unions. Therefore, they are not appropriate to workers' needs at this stage.

Other EU social trade arrangements

To complement the analysis on the EU bilateral social trade arrangement, this approach will be contrasted to the empowerment potential of the unilateral (GSP+) and hybrid (ETI, the Platform and CSR workshops) initiatives, even though these instruments have been analysed less thoroughly.

GSP+ requires the ratification and implementation of the ILO CSL. As such, it focuses solely on the formal opportunity structure and does not contribute to the agency of trade unions. If closely monitored and consistently enforced, GSP+ could contribute to changes in the formal and informal institutions that prevent the implementation of the ILO CLS. The EU funds projects to support GSP beneficiary countries to effectively implement the ILO CLS and comply with reporting obligations (European Commission, 2015). These are implemented by international organisations, mostly the ILO, and focus mainly on the reinforcement of the formal governmental institutions. However, we are not aware of such projects existing in Costa Rica at the time when it was still a GSP+ beneficiary and, if so, whether they had any potential to empower trade unions.

We have described the diversity in hybrid instruments in the section answering the first research question. This is not only obvious in the analysis of their objectives, governance and enforcement. The three examples are 'wired' entirely differently and also differ in their empowering potential. ETI has been supporting Central American trade unions mainly through reinforcing their network embeddedness with a strong international network. These trade unions have decided to use the choice of complaining about labour rights violations and participating to a multi-stakeholder initiative. The last degree of empowerment, achievement of choice, has not been reached entirely, as the trade union's substantial participation was only limited. This being said, Fyffes has been, and still is, suspended from ETI. This suspension affects the formal institution in the opportunity structure and potentially also the informal one: it denounces *solidarismo*, enables dialogue between plantation management and trade unions and sends a strong signal to other ETI members on the protection of trade union rights and the promotion of decent work.

In contrast, the Platform has had a disempowering effect. At first, trade unions and even the ILO was not welcome to participate in the Platform, as the organisers preferred to involve permanent workers' committees (interview 85). The Dutch partners, who contributed to the funding of the Platform, had to insist on the participation of independent trade unions.

However, even when they were allowed and participated (thus achieving the first and second empowering degree), the conditions for substantial participation were too adverse and the trade unions decided to leave. Moreover, the national action plan composed by the Platform intends to promote *solidarismo* internationally. This event reproduces and reinforces the status quo in Costa Rica in general and specifically in its pineapple sector.

We see a similar dynamic in the first CSR organised in the context of the EU-CA AA. During this event, only a limited number of trade unions attended. Accounts vary from only EU trade unions to “a few” Central American trade unions, and CSR was framed as a business matter (interview 79, 81, 83, 84). However, due to the pressure from EU DAG members and a positive response by the EU, more efforts were made to better communicate about the second workshop and to invite trade unions proactively. This approach resulted in a high attendance of Central American trade unions and thus the achievement of the first and second empowerment degree. In addition, the trade unions participated substantially, which should pave the way for the third degree of empowerment. However, little can be said about how the input given by these trade unions was received by the other participants and organisers. Attendees noticed that the smooth and non-conflictual interaction between employers and trade unions across sectors was very unusual. Hence, it was considered a positive experience for all participants. Even though this event might contribute to a convergence between the different actors, it concerns a ‘two-off’ event, with little durable effect on the opportunity structure and agency.

Conclusion

Even though the status quo of power relations has not been challenged through the civil society mechanisms, this does not automatically entail they should be considered useless. Our analysis identified how the agency of Central American trade unions has to a certain extent been strengthened through the creation of a civil society mechanism. However, this additional formal institution did not alter the informal practices that contribute to an obstructive opportunity structure for trade union activity.

At best, civil society mechanism can be evaluated as a recently opened door, through which for now, not much substantial change has passed. Interviewees often emphasised how unfamiliar Central American governments, including Costa Rica, were with the approach introduced by the EU. However, after six years, the time has come to move beyond the ‘teething pains’ of procedural aspects towards more substantial matters, even though the scarce trade union participation is more than a mere procedural issue. The recent kick-off of the EU project to support the functioning of the DAGs as well as the experience of the CSR workshops might nevertheless be auspicious efforts to address the enduring shortcomings of the implementation of the TSD chapter. This being said, the lenient attitude of the EU in the intergovernmental board raises questions on its capacity to durably support the transformation of an opportunity structure which constrains the empowerment of trade unions.

In sum, the enhanced agency of trade unions, stimulated by the civil society mechanisms as well as the hybrid initiatives ETI and the CSR workshops, risks to be in vain if it is not met with complementary developments in the opportunity structure in which they operate. Therefore, until the opportunity structure is addressed and challenged, the EU social trade arrangements will remain inappropriate to the need of workers. The possibility of the EU social trade arrangements being mere drops in the ocean, brings us to the second aspect of relevance: can EU social trade arrangements be considered essential elements of a plan capable of achieving improved labour conditions?

3.3.2 Essential element

Whether the EU social trade arrangements are essential to the improvement of labour conditions in third countries will be assessed through two criteria: first, the coherence of the EU approach with the trade partner's context and other international labour governance initiatives. Second, the indispensability of the EU arrangements both at local, national and international level.

Coherence

First, we will focus on the coherence of the EU approach with the trade partner's context. The analysis above has indicated a mismatch between the needs of Costa Rican workers, namely empowering trade unions, and the achievements of the TSD chapter so far. Concerning the intergovernmental meetings, we found that, even though each country presents its progress concerning the ratification and implementation of the formal 'rules of the game' (namely the ILO conventions), there is no thorough differentiated approach of the EU towards the specific labour issues within each country. The EU does pay attention to the most pressing issues at national policy level, however, we did not find evidence that the EU engages with sectoral differences within the countries (European Commission, 2017b, 2018a). The labour rights violations in Costa Rica concerning FACB and the prevalence of *solidarismo* have to our knowledge not been discussed during the meetings. Accordingly, the situation in the pineapple industry has not been addressed either. Since other Central American countries are facing even more serious labour rights issues, one could understand the limited attention going to Costa Rica. However, for instance the notorious labour rights violations in the Guatemalan sugar industry are not addressed separately either.

Turning to the design and the implementation of the civil society meetings, there are also no indications that the EU has adapted its approach to the context of the trade partner. Regarding the design, we found that the legal provisions establishing the meetings reflect the (low) level of civil society participation in the trade partner. In addition, the implementation differs across Central American countries. The EU has not singled out partner countries that do not comply with their obligation to establish a DAG. Panama, for instance, does not have a DAG. Instead, the EU has raised collective problematic issues such as the lack of independence in de Honduran and Nicaraguan DAGs. In addition, no attention is paid to the representation of the trade partner's most important sectors in the DAG. For instance, CANAPEP, the Costa Rican chamber of pineapple producers, is not a member of the Costa Rican DAG.

Second, we want to know whether the EU approach is coherent with other labour governance initiatives at play. As discussed in the answer to the first research question, the ILO CLS are the cornerstone of the TSD chapter's labour provisions. The commitment of the EU bilateral instrument can therefore be considered as coherent with the multilateral labour governance instrument. This approach, which builds on the ILO principles, is often reiterated by the EU. It does not wish to create parallel labour standards and wants to respect and endorse the ILO legitimacy (European Commission, 2018c). Other concrete examples of the coherence of the EU approach with the ILO are, first, that cases discussed at the International Labour Conference have also raised during the intergovernmental meeting (European Commission, 2017b). Second, the EU funds ILO projects to support ILO CLS implementation in El Salvador and Guatemala (European Commission, 2018a).

Another important player in Central America is the US, which also links trade and labour through the CAFTA-DR trade agreement. This country follows a conditional approach: labour right violations in Guatemala and Honduras have led respectively to the first labour dispute triggered under a US trade agreement and a formal complaint which is currently being addressed through a 'labour rights monitoring and action plan'. Surprisingly, these developments were not discussed during the intergovernmental meetings of the EU-CA AA (interview 50). Even though coordinated efforts of different trading partners to improve labour conditions could increase their impact, this avenue has not been explored by the EU.

In sum, we conclude that the EU approach is not sufficiently coherent with its trade partners' context, nor with other initiators of labour governance initiatives expect for the ILO.

Indispensability

To assess whether the EU arrangements are indispensable for the improvement of labour conditions in Costa Rica, we should know whether the current state of affairs would have been the same without the EU's efforts. Even though the previous analysis showed that there have not been any changes on the ground for trade unions, the creation of civil society meetings can still bring about prospects for social dialogue. One interviewee explained that, before the existence of these meetings, trade unions and employers would only meet for a conflict resolutions. This was due to the fact that Costa Rica does not have similar spaces for social dialogue at national level (interview 82; see also OECD, 2017). Even though the interviewee emphasised that the dialogue was still very limited and flawed, he did acknowledge this positive element. Similar evaluations were voiced regarding the CSR workshops (interview 79 & 84). When asked why they were interested in the civil society meetings organised in the context of the EU-CA AA, both EU and Central American civil society generally answered "because there is nothing else". This shows that the EU has filled in a gap in the existing labour governance.

At the same time, our research has demonstrated that the design and implementation of the TSD chapter and its civil society mechanisms remain inadequate. In addition, the EU position remains soft and cooperative, as the EU reiterates the need to "treat all trade partners as

equals” and it remains reluctant to certainly does not want to act as “a police” (interview 68). Moreover, now that civil society mechanisms have been created, the dominant position of both the EU and Central American countries is that civil society is responsible to “make it work” (interview 50 & 68). However, the previous analysis has shown how decisive the agency of civil society in general, and trade unions in particular, together with the influence of the opportunity structure, is. In other words, in the current circumstances, civil society is too weak and the opportunity structure too adverse to ‘make the civil society mechanisms work’.

Even though our research did not concretely assess the indispensability of EU labour arrangements at the international level, one conclusion on this matter can be deduced anyhow. In essence, we believe the EU plays an important role in supporting the multilateral labour regime, which should underpin all other labour governance initiatives. The failure of a commercial powerhouse like the EU to acknowledge the importance of the ILO and the legitimacy and universality of its conventions would deeply affect this international organisation’s credibility.

Conclusion

The EU social trade arrangements constitute an essential element of the international labour regime, especially through their endorsement of the ILO. This despite the EU’s failure to coordinate its approach with other key trade partners. However, when looking at the lower echelons of labour governance, the EU gradually loses importance. In other words, its scope does not reach the workers at the bottom of supply. This is in part because the EU has not developed a tailor-made approach to the labour situation within the different trade partners and does not prioritise sectors with problematic labour issues. In addition, the flawed design and implementation of its instruments and the EU’s lenient attitude towards its trade partners also play an important role. We therefore conclude that the EU is an essential element of the international ‘plan’, though we cannot state the same for the national and local level. This would be an overly optimistic assessment of the EU trade arrangements.

3.3.3 Conclusion RQ2

The analysis above has drawn a mixed picture of the relevance of EU trade arrangements for the improvement of labour conditions in third countries.

First, even though the agency of trade unions is positively affected, the existing power relations or structural status quo has not been challenged. Therefore, we argue that EU trade arrangements (and especially the EU bilateral trade instrument) do not empower trade unions in the trade partner country and are not appropriate to the workers’ needs. Second, while the EU approach is embedded in the ILO labour regime, it does not adjust its approach to the domestic context of the trade partner by taking sectoral differences into account, or the efforts of other countries. Whereas the civil society mechanisms have been recognised as addressing a governance gap, their current design and implementation flaws, as well as the permissive

attitude of the EU, have partly curbed their potential. Therefore, they cannot be considered an essential element.

These findings lead to the overall evaluation that EU's social trade instruments have been irrelevant so far. However, at the same time, our analysis has shown several positive developments. It would therefore be too short-sighted to dismiss the EU approach as a whole. First of all, our working definition of relevance has set a high threshold. Furthermore, there is a great distance between Brussels and the bottom of supply chains. Even though these matters take time, the EU social trade agreements will need to be implemented more assertively to matter in the long run. In addition, the EU should pay more attention to the context of each country, focus on problematic sectors, and contribute to the agency of trade unions.

3.4 General conclusions

The central question addressed in this dissertation is whether EU trade arrangements can improve labour conditions in third countries. Our research indicates is that it potentially could, but does not do so directly.

While other existing EU social trade instruments have also been assessed in this dissertation, the main focus has been on the EU bilateral trade agreements. More specifically, we focused extensively on the trade and sustainable development chapters and the civil society mechanisms established in these chapters. Through a case study of the EU-Central American Association Agreement, as well as labour conditions in the Costa Rican pineapple sector, we have connected the bottom of the supply chain (the workers in pineapple plantations) to an important importer of fresh Costa Rican pineapples, being the EU. In this context, we have paid particular attention to the existence and functioning of trade unions, as well as their participation in EU arrangements, as they can enable better working conditions by representing workers through social dialogue.

We found that civil society mechanisms in the trade agreement have contributed to the agency, the ability to act and choose, of trade unions. Yet, this advancement is negated by the incapacity of the instrument to deal with the anti-union context in Costa Rica. In other words, for EU trade arrangements to be more effective in terms of improving labour conditions in third countries, it has to address both the agency of trade unions as well as the opportunity structure or institutional context in which they operate, as the latter influences the ability to transform agency in action. This transformation is necessary in order to improve the currently asymmetrical power relations between business and trade unions, which can in turn positively affect labour conditions in the country.

Our research has identified the remaining great distance that exists between Brussels and the bottom of supply chains. Hence, the current EU approach is not able to exert influence across the different echelons of vertical labour governance (international, national, sectoral, local). In order to do so, the EU should improve the implementation of the existing social trade

instruments and become much more assertive towards its trade partners. In addition, the EU should diversify its approach and focus on problematic sectors in each trade partner.

Regarding horizontal labour governance (in which initiatives are driven by public, private actors or both), we have noted that the EU and its member states are increasingly interested in hybrid initiatives in which public and private actors collaborate. Such initiatives could be complementary to the existing state-led social trade arrangements. However, the EU and its member states have –so far– preferred to operate in the shadow of these initiatives as mere funders. They refrain from using their regulatory capacity to ensure the enforcement of the initiative’s objectives.

In addition to these considerations on the EU social trade arrangements, our research did not provide evidence that the reputation of the EU market demanding high labour standards is reflected in the purchasing realities within the EU. In sum, workers have not yet reaped the benefits of EU social trade arrangements. This is especially the case for the most vulnerable, such as illegal migrant workers in plantations.

At a more abstract level, one could wonder whether free trade agreements, which are emblematic for neoliberal free market principles, can be employed as vehicles for social change. Whereas it would be too short-sighted to dismiss the EU approach as a whole, ideological contradictions occur when realising that, for EU social trade arrangements to be more effective, state involvement at EU-level and in the trade partner should be bolstered significantly. In Costa Rica, as well as in other parts of the world, trade unionisation decline coincided with the rise of neoliberal policies in the 1980s. It enabled the flourishing of an alternative type of worker representation, *solidarismo*, at the detriment of independent trade unions. Whether this could actually be reversed by a fierce advocate of free trade remains to be confirmed.

3.5 Concluding reflections

In these concluding reflections we will consider our main contributions as well as our most important learnings regarding interdisciplinary research and finally, the limitations of this study and suggestions for further research.

3.5.1 Main contributions

We believe the academic contribution of this dissertation to be threefold: First, our research offers a substantial contribution to the literature on EU trade governance and the EU trade-labour linkage. More specifically, no other research has extensively studied the EU-CA AA in general and its labour implications in particular. In addition, when our research project was initiated, little was known about the civil society mechanisms established in the latest generation of EU trade agreements. This dissertation has therefore contributed significantly to a deeper understanding of this new phenomenon.

Second, our doctoral research has generated a considerable set of empirical data. This was collected predominantly by means of interviews and non-participant observations in Costa Rica, Honduras and Brussels. The empirical data allowed to address our research questions through an inside-out approach as well as an outside-in approach (see Keuleers et al., 2016). While the former assesses the content and results of a particular policy from the point of view of a foreign policy actor and the implementation objectives it has set, the latter examines foreign policy from the perspective of the country or region to which the policy is targeted. Our research therefore contributes to a new wave of research which also pays attention to the perspectives of local actors in the trade partner.

Finally, the interdisciplinarity of our research contributes to EU studies, political sciences and to agricultural economics and rural development in particular. Whereas EU studies mostly investigates the institutional underpinnings and intentions of EU external action, agricultural economics focusses mainly on the macro-economic impact of tariffs on the agricultural sector or how export opportunities to large markets, such as the EU, enhance social development or form a barrier to small farmers through strict standards. Our research managed to surpass the limits of each discipline by looking beyond the border, both within the EU and within Central America and Costa Rica, connecting workers at the bottom of the supply chain with the EU as importing market. In addition, the central role attributed to trade unions is rare, both in EU studies (except for Van den Putte (2016)) and even more so in rural development studies, where labour is often treated as a passive input factor.

Given this dissertation's more obvious contributions to EU studies and political science it might be appropriate to elaborate on what our research seeks to add to existing debates in agricultural economics and rural development. In this context our first contribution is to the general development debate in which we subscribe to a growing awareness of the often precarious situation of workers at the bottom of global value chains. In this context, our focus has been both on the (potential) importance of importing countries to stimulate a race to the top in terms of labour conditions as well as power inequalities between the different actors in these value chains and how they can be addressed. Our second contribution relates to the current major gap in the literature on labour conditions and collective action of hired workers in the agricultural sector. Scanning the publications of major journals in agricultural economics and rural development⁷ as well as the most relevant policy actors such as the International Fund for Agricultural Development, a UN agency, illustrates how labour is rarely considered in this field. When it does, the focus is on employment or social protection, which were described by a respondent as the '*cara bonita*', or bright side, of labour issues (interview 49). In contrast, both hired labour and trade union rights are seldom studied whereas small farmers and collective organisation in cooperatives has received considerable attention. Therefore, our research tried to counter this blind spot and put landless plantation labour and their collective agency on the academic agenda.

⁷ such as the Journal of Peasant Studies, Journal of Rural Studies, Journal of Agricultural Economics, Agricultural Economics, Journal of Agrarian Change, Journal of Rural Management

3.5.2 Reflections on interdisciplinary research

As mentioned in the introduction of the dissertation, this doctoral research is part of an interdisciplinary project involving two PhD students, Annelien Gansemans and Deborah Martens with a background in respectively agricultural economics and political sciences, and their supervisors, Marijke D'Haese and Jan Orbie. The aim of the project was to link 'Brussels', or EU policy, to the 'field', in our case Costa Rican pineapple plantations, initially to understand the impact of trade on social development. This section will list our most important learnings of our research process concerning interdisciplinarity.

Since interdisciplinary intentions written in (PhD) research proposals are not always successfully translated into actual interdisciplinary research, these learnings mentioned below can also serve as practical recommendations for other researchers. Even though the issues raised are general principles, they might not be applicable to all kinds of interdisciplinary research, for instance when disciplines or fields that are fundamentally different to the ones in our project are being combined.

First, our experience has thought us that collaboration and interdisciplinarity should be common goals of the researchers from the very beginning. At the outset of the doctoral research journey, PhD students are generally still rather flexible about their research questions and design. Therefore, the groundwork for interdisciplinary research should be laid early on and in this context the researchers should adopt an open and inquisitive attitude. This approach enables to incorporate the different disciplines in the project from the start, even if the researchers do not yet master the other disciplines. It allows the researchers to learn from one another and to define the rough contours of their research jointly.

More concretely, when considering our research, looking for avenues that would allow us to connect the micro to the macro-level, the field to Brussels, we concluded that working conditions and consequently trade union rights were the most relevant issue to analyse. This realisation was the result of several brainstorm sessions and discussions, involving the PhD students and their supervisors, as well as joint exploratory field research to Costa Rica during the first year of the PhD. Even though this collaboration might come across as artificial at first, we consider this method to be more auspicious than when researchers opt to first concentrate on their own discipline before looking for overlaps to accommodate the different disciplines.

Second, we believe it is beneficial to collaborate at every stage of the research project. This does not entail that everything should be done jointly. Rather, it implies that a researcher is involved in the process of its colleagues and actively contributes whenever possible. For instance, we shared and discussed interesting literature from different strands, collected and analysed data together and wrote papers together. Especially, the joint data collection proved to be of major importance for the both of us. In addition, we often discussed each other's ideas (including those concerning our unidisciplinary research, see *infra*), met with peers and attended and organised events together. This collaboration was not always intended to be productive, in the sense that we were not always working towards a tangible outcome. The interaction nevertheless helped significantly to develop a deeper understanding of our research subject.

Third, in our case, each researcher also conducted unidisciplinary research. Each of us focussed on intriguing issues that were discerned during exploratory empirical research and collaborated with other researchers. Since we had already defined the bigger research puzzle we wished to address together, the knowledge created during the unidisciplinary phases fitted quite well in this bigger picture and eventually served as stepping stones for joint research efforts. In addition, we informed one another of our progress (and stagnation) and kept exchanging thoughts on our research.

Fourth, it is clear from the previous points that the members of our research project interacted on a regular basis. Indeed, communication played a crucial role in the realisation of our research project. Not only was it important for the demarcation of our research topic and did it allow us to learn from each other, deliberation was also key to identify our assumptions and biases. More concretely, these included –in very general terms– “trade unions are the holy grail and are the right answer to every labour issue”, “it is the EU’s responsibility to find solutions for all domestic issues of its trade partner” and “business interest are always opposed to civil society or worker’s interests”. Not only did removing these blinkers encouraged us to conduct better and more nuanced research, it also helped to distinguish the diverse starting points of the disciplines and therefore to better understand the often invisible divide between researchers coming from distinct disciplines.

Fifth, interdisciplinary research is often associated with synergy. Different disciplines are combined and integrated to address a question that cannot be answered by one discipline alone and the effect of this synthesis is considered to be greater than the sum of what each discipline would do separately. However, to realise such synergies, one needs to be willing to compromise and to be flexible. Whereas synergy is often described as $1 + 1 = 3$, in the context of interdisciplinary research, it would be more realistic to illustrate it as $1 + 1 - 1 = 3$. For instance, I conducted empirical research in Honduras on the civil society meetings organised in the capital as well as on trade unionism in the agricultural sector. However, given the specificities of Annelien’s research approach (e.g. extended stay in the countryside, respondents are mainly plantation workers), time and safety issues impeded us to include Honduras as a case in our joint research. Another example is my interest in CSR. Even though I wanted to focus my final paper on different CSR instruments existing in the EU-Costa Rican pineapple trade, it was more important for us to work together and therefore to focus on trade unions which resulted in article 6 of this dissertation. In sum, interdisciplinary research can be frustrating at times and even require you to “kill your darlings”, nevertheless we mainly experienced it as a rewarding process.

3.5.3 Limitations and avenues for further research

First, even though violations of the labour rights Freedom of Association and Collective Bargaining are a major issue in all Central American countries, the existence of *solidarismo* is rather unique to Costa Rica. Whereas it exists in other countries too, it is not as widespread and undermining to independent trade unionism as in Costa Rica. Since the opportunity structure differs across the Central American countries, there might be different factors at play to explain the overall weakness of trade unions in the region. To increase the generalisability of this research, it would therefore benefit from a complementary similar study of an

agricultural sector in another Central American country (e.g. melons in Honduras or sugar in Guatemala).

Second, while two field visits were conducted in Central America (Costa Rica in 2015, Honduras in 2016), the remaining of the data was collected through Skype interviews and accounts given by EU civil society. Even though we have monitored the labour rights developments in the region and the dynamism in the civil society mechanisms very closely through frequent follow-up meetings with EU civil society, we would have preferred to triangulate our data with additional empirical research on the ground. In addition, due to the timing of our research project, the civil society mechanisms were still very much at the embryonic stage. While this has undoubtedly provided interesting insights, it would be relevant to assess the situation once the EU-CA AA has been implemented for a larger number of years. We therefore suggest to conduct a longitudinal research in in few years' time, that investigates the evolution of the civil society mechanism and their (potential) consequences for trade union rights.

Our third limitation has already been raised above and concerns the meetings of the intergovernmental body. Since they are taking place behind closed doors, we don't have primary data on the course and content of the meetings. This was therefore approximated through information given by EU and Honduran officials that participated to the meetings and official reports written on the matter. Given the importance of the intergovernmental meeting for the implementation of the TSD chapter, we believe a better understanding of their functioning would be beneficial. In this context it would be particularly interesting to research the attitude of all trade partners when discussing labour rights violations in their country and the approach of the EU.

Finally, we identified a fifth limitation of our research, namely the exclusion of private initiatives, such as standards and certification, in our analysis. This was decided because private initiatives do not belong to the range of EU social trade arrangements. However, such initiatives play an important role in the labour governance of agricultural supply chains. In addition, the most recent EU trade agreement texts, such as the EU-Japan agreement or the tabled text of the agreement with MERCOSUR, refer increasingly to CSR, labelling schemes and voluntary initiatives in general. Our research could thus be complemented with a study of private initiatives relevant to the Costa Rican pineapple sector and discern whether there are interesting avenues for synergies between the public and private approaches.

3.6 Recommendations

The following recommendations were written in collaboration with Annelien Gansemans. They are derived from our doctoral research and contain both long-term structural and short-term practical suggestions. They are directed to EU policymakers, EU & Central American civil society, EU buyers, Costa Rican policymakers, Costa Rican (pineapple) trade unions and designers of multi-stakeholder initiatives (MSIs) and private standards in general. Corresponding to the conclusion of our research, the recommendations aim at reshaping the currently adverse opportunity structure, together with strengthening trade union agency in Costa Rica in particular and in Central America in general.

Directed to EU policymakers

We have structured these recommendations along two topics: the EU bilateral trade agreements and the EU's role in promoting Corporate Social Responsibility (CSR). We believe these recommendations are necessary for increasing the EU's relevance in the improvement of labour conditions in third countries, especially in the agricultural sector.

The two recommendations set forward are broad long-term objectives, leading to enhanced labour governance. They are therefore directed to all EU institutions. Wherever our research allowed us to do so, we have translated these into more manageable and concretely implementable suggestions addressed to the relevant EU institutions.

1. Achieve full potential of the EU trade agreements to promote decent work

- Bolster the institutional monitoring mechanisms established in the trade and sustainable development chapter (the intergovernmental body and civil society mechanisms)
- Adopt an integrated supply chain approach to address the most problematic sectors in terms of labour rights violations
- Replace Free Trade Agreements by Sustainable Development Agreements

2. Integrate Responsible Business Conduct in EU trade policy

- Consolidate Member State and EU Corporate Social Responsibility efforts in one EU mandatory approach
- Improve cooperation within the EU Commission's DGs and across EU institutions
- Stimulate ethical consumerism

- 1. Achieve full potential of the EU bilateral social trade arrangement**
 - a. Bolster the institutional monitoring mechanisms established in the trade and sustainable development (TSD) chapter**
 - i. Intergovernmental body**

Our research showed that in general the European Commission's attitude is too lenient towards trade partners that do not meet their obligations under the TSD chapter. More specifically it should ensure at least the yearly organisation of the intergovernmental board meeting, together with the corresponding transnational civil society meetings, as prescribed in the agreement. During the intergovernmental debates, the Commission should not shy away from being more assertive, similarly to its attitude concerning commercial issues, in criticising labour right violations. In addition, to address the entire opportunity structure in which trade unions operate, adverse informal practices, such as *solidarismo*, should be identified and addressed. If preferred, additional bilateral meetings with the partner countries can be envisaged to discuss the situation more thoroughly.

The functioning of each Domestic Advisory Group (DAG) should be evaluated during the intergovernmental meeting. The EU should demand transparency from all trade partners on the composition, meeting frequency and agenda of their DAGs. In between the yearly meetings, ad hoc meetings via videoconference should be organised when there are signs that the labour right situation in a country is not being addressed properly or that the organisation of the DAGs is stalling. A close contact with the EU DAG can provide valuable insights on this matter.

To increase the effectivity and efficiency of the meetings, each trade partner should circulate the information they want to present on the respective implementation of labour standards before the meeting, in order to avoid a long series of presentations and to allow more time for debate.

Finally, concrete measures should be taken to ensure the accountability of the intergovernmental body and that civil society input is considered. The two main aspects are: first, to report back to civil society on what has been done regarding their contributions. This can be done at the occasion of the yearly intergovernmental meetings. However, this does not imply that civil society's concerns should only be considered once a year. On the contrary, the intergovernmental body should follow-up more frequently on the issues raised, for instance through videoconferences. Similarly to the practice in the EU, Central American government representatives could update their DAG members during the DAG meetings. Second, the order of the meetings should be altered as to allow the civil society input to feed into the discussions of the intergovernmental body.

ii. Civil Society Mechanisms

The recently launched project to support the implementation of the TSD chapter through the strengthening of civil society participation can only be welcomed. However this does not mean the Commission can rest on its laurels.

Continued attention should be given to the functioning of the DAGs in all its trade partners and to means that can improve trade union agency. In addition, the representativeness of the DAG members should be monitored. Moreover, it is still necessary to raise more awareness on the existence of the civil society mechanism both in the EU and in Central America. Ad hoc meetings such as those organised on CSR in collaboration with local partners, are interesting stepping stones for the civil society mechanisms.

b. Adopt an integrated supply chain approach

The local context of each of the trade partners should be examined to identify the supply chains with the most problematic labour issues. These should then be prioritised in the implementation of the TSD chapter. In addition, the different stakeholders active along this supply chain should be involved in the approach. This should be done in a comprehensive manner and include workers, ideally represented by trade unions, business actors at company and sectoral level, third party auditors, representatives of certifications used in the sector, Ministry of Labour officials, exporters, importers, retailers and if applicable other initiatives at play in the sector.

c. Replace Free Trade Agreements by Sustainable Development Agreements

This recommendation makes the previous ones redundant, as it suggest a whole new approach to bilateral arrangements.

We described in the dissertation how the EU has been pursuing a neoliberal trade agenda since the 1980s, which was been explicitly stepped-up with the Global Europe trade strategy in 2006. Because the EU also concludes free trade agreements with countries that have lower sustainable development standards, this approach risks to reinforce or worsen existing socially and environmentally unsustainable practices. The TSD chapter created in the last generation of EU trade agreements aims at offsetting negative consequences of the trade agreement. However, in this dissertation we have seen that the current approach is flawed as the sustainability provisions are subordinate to the commercial ones and their governance and enforcement is too weak.

We therefore suggest to replace the current bilateral approach by sustainable development agreements, structured along the three P's, often set forward to define sustainable development, namely People, Planet and Profit. These agreements contain social, environmental and commercial provisions which are all equally important and enforceable. In addition, their content ensures that the EU trade partner preserves sufficient policy space for its economic and sustainable development.

Labour right issues are monitored by an active, specialised and adequate labour rights committee in which the ILO is also represented and issues of both the EU and trade partner are discussed. If persisting labour right violations occur and the consistently and assertively applied consultation mechanisms have failed, it is possible to sanction the trade partner. The sanctions consist of three components. The first component stems from the idea of community service. The trade partner would have to send a tripartite delegation of officials, employers and trade unions to the ILO to attend trainings and experience best practices on the ILO Conventions that are being violated. This initiative will be funded by the trade partner's revenues of trade with the EU. Second, if the violations persist, the tariff rate of the goods produced in the sectors dealing with the labour rights violations will gradually increase. Finally, the last component is the nuclear option through which, if none of the other steps have led to an amelioration of the labour conditions, the sustainable development agreement can and will be suspended.

This approach will need to reshuffle the current structure of the Commission's administrative structure. The creation of a DG Sustainable Development, grouping the relevant units of the existing DGs, could be considered.

2. Recognise Corporate Social Responsibility as the missing link in EU trade-labour linkage

There is a burgeoning awareness that the respect for labour rights should be promoted and enforced through a combination of complementary public and private efforts. It is however crucial that public actors do not stay in the back seat when it comes to private or hybrid initiatives. They should not shy away from effectively using the soft and hard instruments in their toolbox. This recommendation aims therefore at integrating Corporate Social Responsibility (CSR), increasingly referred to as Responsible Business Conduct, more appropriately in EU policy. Above all, the international aspect of CSR, acknowledging the responsibilities of parent companies, buyers and importers for practices and consequences in their supply chains should be more emphasised. In addition, ethical consumerism should be stimulated. This should not only become more obvious and addressed more concretely in EU trade arrangements, it should also be addressed more seriously at EU-level.

a. Consolidate Member State and EU CSR efforts in one EU mandatory approach

Several EU member states are reinforcing their CSR policies. This entails they are moving beyond a soft and voluntary approach and increase the regulatory strength of their instruments. In 2015 the UK Modern Slavery Act came into force. The Act focusses on the prevention and prosecution of modern slavery, the protection of victims and includes a provision on transparency in supply chains. It makes UK companies accountable for slavery and labour abuses occurring along their whole chain of operations. In 2017, the French Duty

of Vigilance law came into force. Companies subject to the law must establish mechanisms to prevent human rights violations and environmental impacts throughout their chain of production, including for their subsidiaries and companies under their control. Finally, the Dutch Parliament adopted the Dutch Child Labour Due Diligence Bill. Once into force, it would require companies to conduct due diligence as to whether child labour is occurring in their own operations or in their supply chains. In addition to these mandatory human rights due diligence laws there are also softer supply chain specific initiatives such as the Dutch Agreement on Sustainable Textile and Garment, the German Partnership for Sustainable Textiles as well as the Dutch Sustainable Initiative Fruit and Vegetables.

To increase the clout of the above mentioned laws and initiatives, the EU could play an important role in coordinating these efforts and lifting them to EU level. For this purpose the current (too) soft CSR strategy should be thoroughly revised. Member states should realise this approach would also reinforce existing EU-instruments such as its non-financial reporting directive and EU Conflict Minerals Regulation by embedding them in a comprehensive and enforceable CSR policy. In addition, the EU approach would bolster existing multilateral instruments such as the UN Guiding Principles on business and human rights and the OECD Guidelines for multinational enterprises by making adherence to their principles more binding. It should also contribute to the development of the UN 'Zero Draft' Treaty on Business & Human Rights.

b. Cooperation within the Commission and across institutions

The horizontal cooperation between the relevant European Commission DGs should be enforced. CSR is currently a DG Grow competence, which is responsible for the internal market, industry, entrepreneurship and small and medium enterprises. To improve labour conditions across supply chains, reaching the most vulnerable workers at the bottom of those chains, structural cooperation should be created between DG Grow, DG Employ, DG Trade, DG Devco and DG Justice. Moreover, DG Envi should also be involved for environmental aspects of business conduct, whereas DG Agri should participate when agricultural supply chains are discussed.

There is consultation and cooperation between DG Trade and DG Employ concerning the implementation of TSD chapter. However, this collaboration remains rather shallow as the respective units do not have enough resources to ensure a thorough follow-up on the labour situation in all trade partners. In addition, a working group on CSR would exist within the Commission, however no public information on this formation was found. In the 1990s a group of dedicated Commission officials created an informal working group on Fair Trade. It faded away as the initiative never formalised. This example shows how (sincere) policy priorities should be implemented through an adapted and adept institutional environment. Interestingly, a number of Members of the European Parliament created a working group on Responsible Business Conduct in 2018. This exists alongside the Parliament's Fair Trade Working Group, which has been created years ago and focusses more on the developmental

aspect of trade. These working groups would be interesting interlocutors for similar structures in the Commission.

c. Stimulate ethical consumerism

Our research showed how the discourse of the EU and its consumers on their preference for goods produced in sustainable conditions is not translated in significant import and purchase practices. Focussing on EU consumers, there is a discrepancy between what they deem important and what products they buy in the end. We believe this should be addressed in two ways:

- Transparency and accountability in supply chains: engaged consumers should be able to easily request and find information on the products and brands they buy. The due diligence initiatives described above are good starting points, however these are not tailored to customer needs. The EU should enable the development of a framework in which actors in the supply chain contribute to answering the questions “Who made my clothes?” and “Who picked my food?”. It is important not to fixate solely on certified products. Even though certain labels have a more positive and durable impact than others, they are an ‘interim solution’ as market instruments that do not carry much structural transformative potential.
- Awareness raising among policy makers and consumers: even though EU consumers are said to be more demanding, much remains to be done to increase awareness among the 500 million EU citizens. In essence, the link between what consumers buy, the price they pay for it and the way it was produced should become more visible. Make Fruit Fair is a good example of an effective advocacy EU funded campaign. Such campaigns should be repeated, conducted for other products and communicated more widely. In addition, this topic should also be consider in educational programs.

Directed to EU & Central American civil society

- Ensure continuity of the DAGs through committed members and the consolidation of the DAG activities
- Enabling deliberation through the acknowledging and addressing of power inequalities between the members and finding a balance between being constructive and critical
- Improve the collaboration among the Central American DAGs as well as with the EU DAG

It is crucial for the functioning of the DAGs that they have active and committed members, dedicated to the advancement of not only their own sustainability interest, but also the progress of the civil society mechanisms. This does not entail they should support the liberalisation objective of the trade agreement, rather, it suggests a constructive attitude within

the DAG. In addition, the DAG should reflect the society they represent, in the sense that all relevant stakeholders should be represented. DAG members should evaluate whether other organisations should join and reach out to these potential members.

The continuity of the DAGs depends currently mostly on the commitment of their members, and especially their presidency. Members should be aware of this weakness and try to consolidate the functioning of the DAG into a more mature practice. On a practical note, the DAGs should meet regularly, for instance four times a year. They should follow a work program, discussing substantial aspects of sustainable development. The secretariat and presidency (comprising of one representative of the employers, employees and environmental constituency) of the DAG would then ensure the continuity in between the meetings.

Moreover, in order to allow the DAGs to be fora of proper deliberation, power imbalances between the members should be acknowledged and addressed, if necessary by an impartial moderator. It is therefore important for the DAG to function as one group, not divided into subgroups per constituency. Civil society has to find a balance between being constructive and critical. On the one hand DAG members should be able to maintain an open and constructive dialogue among each other and with the governmental actors. On the other hand they should also preserve their role as a watchdog and monitor the implementation of the TSD chapter. In addition, civil society actors that are critical to free trade should continue to conceptualise an alternative trading system.

Finally, there should be better collaboration among the Central American DAGs as well as with the EU DAG. Since the functioning of the Central American DAGs is still suboptimal, coordination between all DAG has proven to be difficult. The practice of convening a DAG-to-DAG meeting (which is not foreseen in the agreement) during the series of transnational meetings, should be maintained. In addition, the requested meeting gathering all the DAGs and the intergovernmental body should also become a common practice. This meeting will partly allow to address the accountability issue mentioned above. Our research has shown that EU DAG members have helped to increase the agency of Central American trade unions. These efforts are lauded and should certainly be sustained.

Directed to EU buyers

- Adjust sourcing practices to provide more secure orders and build long-term relationship with preferred suppliers
- Invest in long-term relationship and collaborative approach with suppliers to find solutions
- Consider besides price also good working conditions as a pre-condition for purchasing
- Promote enabling rights and social dialogue and provide the support needed to improve working conditions

EU buyers should take their responsibility and prevent that their sourcing practices translate into increased levels of job insecurity to the extent that plantation workers are refrained from using their voice. Rather than adopting codes of conduct and monitoring compliance through checklist audits, a shift is recommended toward a collaborative approach and direct interaction with suppliers. Working with preferred suppliers offering secure orders, better planning and prices can provide the necessary incentives to change their relationship with workers and unions.

Enabling rights such as social dialogue and consultation with independent workers' representatives should be prioritised in order to build a positive attitude towards unions and social dialogue. The buyer can facilitate change by stressing the importance of respect for labour rights as basic requirement for buying products, including respect for trade unions and collective bargaining. Yet, the ultimate responsibility lies on the local actors involved in dialogue. Buyers can also support investments in capacity-building and organise follow-up visits to persuade suppliers and develop a more union-friendly culture. However, if the main criteria in decision-making of the buyer is to hold the price as low as possible, there will be little room for the improvement of employment quality in the field.

Directed to Costa Rican policymakers

- Strengthen labour law enforcement by investing in labour inspectorate
- Keep better track of the registration of plantations and the labour market statistics
- Ensure that subcontracted workers are granted the same level of protection as formal plantation workers
- Improve registration procedures for migrant workers (e.g. costs, time, access) and more actively engage with companies to grant working permits
- Review the obstacles in current labour law that impede plantation unions to initiate collective bargaining and allow migrant workers in leadership positions of trade unions
- Establish a tripartite body for the agricultural sector and organise a public debate about social dialogue
- Publicly differ between the functions of solidarist associations, permanent committees and independent trade unions
- Stimulate the participation of employers and trade unions representing the country's most important export sectors to the Costa Rican DAG

The Costa Rican government has a prominent role to play in shaping the institutional environment to enable worker empowerment. The state has to guarantee that all workers have the rights to freedom of association and collective bargaining so that unions can flourish. The dissertation illustrates that there is a gap between the *de jure* labour code and *de facto* implementation of the laws. This leaves room for improvement in the enforcement and

requires investment in the resources available to the labour inspectorate and their ability to immediately fine violators. Nevertheless, strengthening government capacity to enforce labour law is necessary but not sufficient to improve working conditions given that much of the labour violations are provoked by flexible purchasing practices of international buyers.

A clarification of national legislation is also required regarding the responsibilities of subcontractors to ensure that workers are granted equal rights. Although the labour reform has reduced the barriers to strike, obstacles remain for unions to achieve the threshold of 33% unionisation before they can negotiate a Collective Bargaining Agreement. Moreover, workers with a foreign nationality are not permitted to take up leadership positions in trade unions. Another burden for (irregular) migrant workers are the procedures to obtain a working permit. Legal barriers for migrant workers to access formal employment need to be removed and procedures should be streamlined so to reduce informal irregular work in plantations. This would allow these workers to benefit from the same level of protection, working conditions and rights as native workers. The registration of plantations should be better tracked in an accessible public database as well as the number of plantation workers employed per plantation as workers often move, because their contract does not exceed three months, and plantations change names.

The government should facilitate consultation and dialogue with agricultural workers at sectoral and national level. Currently, social dialogue efforts are focussed on company specific issues at plantation level, whereas social dialogue at sector level is absent. Therefore, the establishment of tripartite structures for social dialogue in the agricultural sector and a national tripartite economic and social council could overcome the weak tradition in social dialogue. This can provide a platform to organise a public debate about the difference between unions and solidarist associations in order to shift the negative public perception. Moreover, given the significant undermining effect of *solidarismo* on trade unionism, Costa Rican government should reconsider their implicit support to alternative workers' organisation. In addition, they should create awareness on the different functions of the organisations.

Finally, to fully meet its obligations of the TSD chapter, Costa Rica should stimulate the participation of the employers and trade unions representing the country's most important export sectors to the Costa Rican DAG.

Directed to Costa Rican (pineapple) trade unions

The recommendations are directed to trade unions in the pineapple sector, however most suggestions are relevant for other trade unions too.

Practical short-term measures:

- Reach out to temporary and migrant workers in a proactive way
- Raise awareness on workers' rights in public spaces and invite all community members

- Improve the internal culture and functioning of unions

Structural long-term measures:

- Build alliances for external support while maintaining local ownership
- Coordinate at sectoral and national level through an umbrella federation
- Adjust communication strategies to have constructive dialogue with management

Local trade unions should focus on strengthening worker's agency. However, this requires infrastructural, human and financial resources which are often limited because membership fees are not sufficient to fund union activities. The available funds should be optimally invested to improve union functioning and meet worker's needs. Given the hostile environment, unions should strategically look for allies, new members and resources to increase union bargaining power.

Temporary and migrant workers are a relevant target group for union organisation, because they comprise a large share of the agricultural workforce and are the most vulnerable to poor working conditions. Unions usually do not consider temporary workers because they have few incentives to represent these workers. Temporary workers are mobile as they frequently relocate from plantation to plantation and are not tied to one location. The fear of losing their job may impede them from reaching out to unions. The cost of union membership and unfair competition with the alternative solidarist association, which serves a saving fund for workers, can also prevent workers from becoming a union member.

At the same time, workers' knowledge of the existence and role of unions is very limited. Therefore, unions are encouraged to organise more capacity building and awareness raising sessions in the communities to convince workers to join their ranks and develop the necessary capabilities for social dialogue. Building internal cohesion between union members is also necessary to strengthen the union from within. Yet, connections with external actors remain essential for funding, support and advice. Although there is a trend in increased reliance on international support from NGOs and global unions, this should not divert their local strategies from the crucial need to mobilise workers from bottom-up, strengthen their representative legitimacy and make the union more appealing.

Regarding the internal culture and traditions, trade unions are often built around one strong, experienced leader who has an exemplary function and takes up all the union duties. Yet, training and forming a new generation of trade unionists is also important to have a competent base to take over the leadership roles. To revitalise union strategies, new members that are willing to engage should receive the necessary support to develop their leadership skills and move up hierarchical ranks. Leaders that are close to the workers are more aware of what lives in the plantation and can meet the needs of workers and younger generations more appropriately.

At sectoral level, there is limited coordination between unions in different plantations. The fragmentation of unions implies that they operate in isolation and focus on specific issues at company level. Unions should join forces to develop a long-term strategy to overcome structural challenges in the agricultural sector and learn from each other. They can share experiences, information and guide new embryonic unions to become stronger. Sectoral federations can help to build alliances between unions and to coordinate workers' representation in dialogue platforms with employers at national level. A stronger, institutionalised federation at national level is also better armed to reduce the negative perception and competition with solidarist associations. In addition, sectoral trade unions can represent the industry's workers in national and international platforms (e.g. the Piñera National Initiative for Sustainability and the civil society meetings organised in the context of the trade agreements with the EU).

Union leaders should be more open to collaboration. Collaboration should be pursued, not only among unions, but also with their employers. This implies to move away from traditional strategies rooted in capital-labour confrontation towards constructive dialogue. In other words, they need to find a balance between a constructive watchdog function and militant behaviour with complaints and strikes being instruments of last resort. Although they hold diverging interests, the opposing parties should try to convene at the bargaining table and find a consensus in the interest of both. Finding common interests is likely to contribute to the legitimacy of unions, because they will be more likely to demonstrate achievements in the benefit of workers. In plantations with trade union activity, regular communication channels with management and supervisors should be established. Unions should make full use of those channels and prepare the agendas to optimise effective meetings.

Directed to designers of multi-stakeholder initiatives and private standards

1. Follow an inclusive approach and give more attention to the vulnerable segments of workers in the content and implementation of standards and MSIs

- Enhance the process through which workers can claim their rights
- Check the prevalence of subcontracting and interview workers outside plantations in the community
- Use participatory tools to stimulate participation of all workers

2. Adjust the design of MSIs to ensure that all stakeholders are equally involved in the implementation

- Make sure that all stakeholders have the opportunity to participate or be represented
- Make sure that the rules of procedure enable all stakeholders to participate, express their opinion and be heard
- Build trust and facilitate discussions in a constructive atmosphere through an impartial moderator

Worker empowerment often remains a blind spot in private standards and. Instead of addressing outcomes such as wages, working time and occupational health and safety, standards should also enhance the process through which workers can claim their rights. If workers are more aware of their rights, they can challenge unequal labour-management relations and provide pressure from bottom up.

The lack of job security and prevalence of unstable employment relations, such as subcontracting, need to be addressed in criteria of standards and more thoroughly checked in audits. The standards generally remain vague in the interpretation of temporary contracts and fail to acknowledge the impeding effect of job insecurity on the voice of vulnerable workers such as migrants. More attention should be given to the most vulnerable segments in the implementation of standards and MSIs, such as irregular migrant workers, to ensure that they also have a voice.

Participatory tools can be used to encourage workers and unions to give their opinion, share information and develop solutions to address the worker's needs. Our research also calls for a continuous evaluation of MSI participatory processes (regarding representativeness, procedural fairness and consensual orientation) and strengthening of union power resources (internal solidarity, network embeddedness, narrative and infrastructural resources). Most importantly, existing power imbalances should be acknowledged and addressed in the MSIs. The study of the MSIs demonstrates that trade union participation is not enough. Substantial consultation requires willingness to listen and commitment from the parties involved in finding solutions together with workers and their unions.

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Annex

- A. Data Collection
- B. Contribution co-authored articles & permission first authors
- C. Additional publications

A. Data collection

Interviews

	Date	Place	Organisation	EU trade	Fair Trade	Labour	Costa Rica	Honduras	CSMs	Agriculture
1	18/02/2015	Ghent	City of Ghent		x					
2	26/02/2015	Brussels	Fair Trade Advocacy Office	x	x					
3	10/04/2015	Ghent	Justice & Peace	x	x					
4	14/04/2015	Sint-Katelijne-Waver	Univeg				x			x
5	22/04/2015	Brussels	DG Devco, European Commission		x					
6	28/04/2015	Brussels	DG Trade, European Commission	x			x			
7	5/05/2015	Brussels	DG Trade, European Commission	x	x				x	
8	21/05/2015	San José	Journalist Tico Times	x			x			
9	22/05/2015	San José	Costa Rica Fair Trade NGO		x		x			
10	25/05/2015	San José	Costa Rica Fair Trade NGO		x		x			
11	26/05/2015	San José	Dutch Embassy	x			x			
12	26/05/2015	San José	EU Delegation to Costa Rica	x	x		x		x	
13	27/05/2015	San José	Private sector 1, Costa Rica DAG	x			x			x
14	27/05/2015	San José	CANAPEP	x			x			x
15	27/05/2015	San José	Private sector 2, Costa Rica DAG	x	x		x		x	
16	28/05/2015	San José	Vice Minister of Labour		x		x			
17	28/05/2015	San José	PROCOMER	x			x			x
18	29/05/2015	San José	ILO San José office	x		x	x			
19	29/05/2015	San José	German Chamber of Trade	x			x			
20	30/05/2015	Boca Arenal	Agrofair/Agronorte	x	x		x			

21	1/06/2015	San José	Former Member of Costa Rican Parliament	x	x	x	x			
22	2/06/2015	San José	Trade union SITRACOBAL	x		x	x		x	x
23	2/06/2015	San José	Trade union SITRAP	x	x	x	x			x
24	2/06/2015	San José	Plataforma piña en Costa Rica	x	x	x	x			x
25	5/06/2015	San José	Private sector 3, Costa Rica DAG	x			x			
26	5/06/2015	San José	Trade union ICAES	x		x	x		x	
27	6/06/2015	Limon	Centro de Solidaridad			x	x			
28	7/06/2015	Limon	Trade union SITRACHIRI			x	x			x
29	8/06/2015	Limon	Labour inspection		x	x	x			x
30	9/06/2015	San José	Trade union CMTC & COSIBA	x	x	x	x			x
31	9/06/2015	San José	Trad union ANEP	x		x	x			
32	10/06/2015	San José	Ministry of External Trade	x		x	x			
33	11/06/2015	San José	Trade union ICAES	x		x	x		x	
34	3/07/2015	Leuven	Vredeseilanden	x	x					x
35	8/07/2015	Brussels	DG Trade, European Commission	x		x			x	
36	9/07/2015	Brussels	Trade union 1, EU DAG	x		x			x	
37	1/09/2015	Brussels	Fair Trade Advocacy Office	x	x				x	x
38	11/09/2015	Skype	Fair Trade Consultant	x	x		x			x
39	17/02/2016	Brussels	EESC	x					x	
40	3/06/2016	Brussels	DG Devco, European Commission	x		x		x	x	x
41	13/06/2016	Tegucigalpa	Consulate of Belgium in Honduras					x		
42	13/06/2016	Tegucigalpa	EU Delegation to Honduras	x		x		x	x	x
43	14/06/2016	Tegucigalpa	Asociacion Solidaridad		x			x		x
44	19/06/2016	Tegucigalpa	Trade union 2, EU DAG	x		x		x	x	x
45	20/06/2016	Tegucigalpa	CHAAC	x				x		
46	20/06/2016	Tegucigalpa	CIFCA	x				x	x	

47	21/06/2016	Tegucigalpa	Via Campesina		x			x	x	x
48	21/06/2016	Tegucigalpa	Ministry of Labour	x		x		x	x	
49	22/06/2016	Tegucigalpa	Ministry of Labour			x		x		x
50	22/06/2016	Tegucigalpa	Ministry of Economic Development	x				x	x	x
51	23/06/2016	Tegucigalpa	Trade union CUTH & CGT			x		x		
52	23/06/2016	Skype	Trade union AFL-CIO- US			x		x		
53	23/06/2016	Tegucigalpa	FOSDEH	x				x		
54	24/06/2016	Tegucigalpa	ILO office Tegucigalpa			x		x		
55	24/06/2016	Tegucigalpa	UNITEC	x		x		x		
56	27/06/2016	Choluteca	Labour inspection			x		x		x
57	27/06/2016	Choluteca	Trade union STAS			x		x		x
58	28/06/2016	Tegucigalpa	Constitutional lawyer					x		
59	29/06/2016	Tegucigalpa	Ministry of Economic Development	x				x		
60	30/06/2016	Tegucigalpa	UNAH			x		x		
61	30/06/2016	Tegucigalpa	US embassy	x		x		x		
62	4/07/2016	La Entrada	Fair Trade cooperation		x					x
63	6/07/2016	San Pedro	Trade union FOS	x		x		x	x	
64	6/07/2016	San Pedro	Mayacert		x			x		x
65	6/07/2016	San Pedro	Trade unions STIBYS, Solidarity Center, FESTAGRO			x		x	x	x
66	7/07/2016	La Lima	STAS/FESTAGRO	x				x	x	x
67	7/07/2016	El Progreso	Labour inspection			x		x		x
68	4/08/2016	Brussels	DG Trade, European Commission	x		x			x	
69	8/09/2016	Brussels	NGO, EU DAG	x					x	
70	27/09/2016	Brussels	Honduran Activist					x		
71	11/10/2016	Antwerp	FOS	x		x	x	x		x
72	9/11/2016	Brussels	EESC	x					x	

73	15/11/2016	Brussels	NGO, EU DAG	x			x		x	
74	21/03/2017	Brussels	NGO, EU DAG	x					x	
75	9/06/2017	Skype	Trade union 2, EU DAG	x		x	x	x	x	x
76	13/09/2017	Brussels	NGO, EU DAG	x					x	
77	12/10/2017	Brussels	NGO, EU DAG	x					x	
78	1/11/2017	Mail	CSU			x	x		x	
79	13/06/2018	Brussels	NGO, EU DAG	x					x	
80	30/07/2018	Phone	Trade union 2, EU DAG	x		x	x	x	x	x
81	2/08/2018	Phone	DG Trade, European Commission	x		x			x	
82	3/08/2018	Skype	Trade union, Costa Rica DAG	x		x	x		x	x
83	10/08/2018	Mail	EU delegation Costa Rica	x		x			x	
84	25/09/2018	Brussels	Trade union 1, EU DAG	x		x			x	
85	27/09/2018	Skype	Bananalink	x	x	x	x	x		x
86	28/09/2018	Skype	Oxfam Germany - Make Fruit Fair	x	x	x	x			x
87	14/12/2018	Brussels	ITUC	x					x	

Farm visits

	Date	Place	Farm type
1	1/06/2015	Pital, Costa Rica	Small fair trade producer pineapple
2	4/06/2015	Pavon, Costa Rica	Pineapple plantation owned by multination
3	8/06/2015	Zurqui, Costa Rica	Banana plantation owned by multinational
4	4/07/2016	La Entrada, Honduras	Fair Trade cacao plantation

Non-participant observation

	Date	Place	Meeting
1	1/03/2016	Brussels	EU-CA AA: EU DAG meeting
2	12/04/2016	Brussels	CIFCA General Assembly
3	15/06/2016	Tegucigalpa	Foro de movimientos sociales
4	16/06/2016	Tegucigalpa	EU-CA AA: Workshop
5	17/06/2016	Tegucigalpa	EU-CA AA: DAG to DAG meeting
6	18/06/2016	Tegucigalpa	EU-CA AA: transnational meeting, only civil society
7	20/06/2016	Tegucigalpa	Dinner civil society & EU officials
8	21/06/2016	Tegucigalpa	EU-CA AA: transnational meeting, with intergovernmental board
9	8/12/2016	Brussels	EU-Peru-Colombia-Ecuador FTA: transnational meeting, with intergovernmental board
10	13/06/2017	Brussels	EU-CA AA: DAG to DAG videoconference
11	19/06/2017	Brussels	EU-CA AA: EU DAG meeting
12	13/06/2018	Brussels	EU-CA AA: transnational meeting, with intergovernmental board
13	4/10/2018	Brussels	EU-CA AA: EU DAG meeting
14	14/01/2019	Brussels	EU-CA AA: EU DAG meeting

Focus groups

(I assisted during these focus groups, I was not leading them)

	Date	Place	Content	Participants
1	24/05/2015	Sarapiquí, Costa Rica	Main labour issues, achievements of the union, challenges/difficulties they experience, role government, business, private standards, NGOs, EU, solidarismo	Union leader & 13 Union members COSIBA-CR, SITAGAH SITRAPEM
2	8/06/2015	Zurquí, Costa Rica	Problem tree most pressing labour issues	5 union members of multinational banana and pineapple plantation

B. Personal contribution co-authored articles

All articles in this dissertation are the product of intense collaboration between different researchers and are by consequence co-authored. As the faculty regulations concerning co-authored articles require, I will describe my personal contribution to each article here below, even though I believe the final result has benefitted from synergies between the authors.

- **Article 1: The EU and Fair Trade: hands-off?**

Deborah Martens & Jan Orbie

Prof. Orbie took the lead concerning the conceptual framework and wrote the first version of this book chapter. While we regularly reflected on the central argument, content and structure of the paper, I conducted most of the literature review and wrote the majority of the empirical part on an EU Fair Trade policy.

- **Article 2: Do Labour Rights Matter for Export? A Qualitative Comparative Analysis of Pineapple Trade to the EU**

Annelien Gansemans, Deborah Martens, Marijke D'Haese, Jan Orbie

While Annelien Gansemans developed and applied the QCA, I contributed to the development of the rationale of the paper, the conditions used in the QCA as well as the introduction, the description on the EU trade aspects and the conclusions.

- **Article 3: Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index**

Deborah Martens, Lore Van den Putte, Myriam Oehri, Jan Orbie

I took the lead for the development of the codebook, which was then adapted in consultation with the other authors. The empirical analysis was conducted by myself and Lore Van den Putte. We also took care of drafting the text.

- **Article 4: Explaining variation of civil society involvement in EU trade agreements**

Myriam Oehri, Jan Orbie, Deborah Martens, Lore Van den Putte

I contributed to the development of the paper's research rationale and design. In addition, I assisted in the calibration of the data as well as the analysis and writing of the results.

- **Article 5: Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements**

Jan Orbie, Deborah Martens, Myriam Oehri, Lore Van den Putte

The empirical research of this paper was driven mainly by Prof. Orbie and myself. I took the lead in the creation of the survey and data collection.

- **Article 6: Trade Unions in Multi-Stakeholder Initiatives: What Shapes Their Participation?**

Deborah Martens, Annelien Gansemans, Jan Orbie, Marijke D'Haese

Annelien and I contributed equally to this paper. A part of the data was collected jointly, while each of us also conducted empirical research separately. Even though we developed the framework together, I focussed most on the criteria concerning the design & implementation of multi-stakeholder initiatives while Annelien elaborated the trade union power resources. The analysis of the data is the result of collaboration between all authors.

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DATE

11 February 2019

Permission inclusion co-authored article in PhD

To whom it may concern

As the first author of the article 'Do Labour Rights Matter for Export? A Qualitative Comparative Analysis of Pineapple Trade to the EU' I hereby confirm that Deborah Martens has the permission to include this article in her doctoral dissertation.

She has contributed substantially to the research and writing process of this article.

Sincerely,



Annelien Gansemans

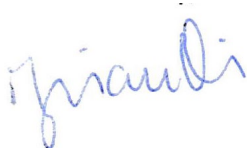
New York, 17th February 2019

To whom it may concern.

Dear Sir or Madam,

As the first author of the paper „Explaining variation of civil society involvement in EU trade agreements“, I hereby confirm that I grant permission to Deborah Martens to include this article in her doctoral dissertation. She has significantly contributed to the research and writing process.

Yours sincerely,



Dr. Myriam Oehri

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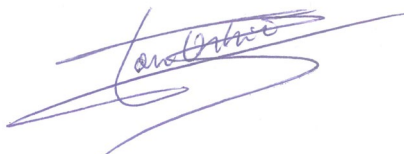
DATE	PAGE
12 February 2019	1/1

Permission inclusion co-authored article in PhD

To whom it may concern

As the first author of the article 'Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements' I hereby confirm that I grant permission to Deborah Martens to include this article in her doctoral dissertation. Deborah contributed significantly to the data collection, data analysis and writing of the article.

Yours sincerely,



Jan Orbie

C. Additional relevant publications

- **Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation**

Jan Orbie, Deborah Martens and Lore Van den Putte

Published as a CLEER Paper, 2016/3 (2016)

- **Civil society meetings in EU trade agreements: recommendations and lessons for EPAs**

Deborah Martens, Jan Orbie, Lore Van den Putte and Yentyl Williams

Published as an ECDPM Briefing Note, No. 93 (2016)

**CIVIL SOCIETY MEETINGS IN EUROPEAN UNION TRADE
AGREEMENTS: FEATURES, PURPOSES, AND EVALUATION**

JAN ORBIE, DEBORAH MARTENS AND LORE VAN DEN PUTTE

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ABSTRACT

A novelty in the new generation of European Union free trade agreements is the chapter on trade and sustainable development. This includes references to labour and environmental provisions that should be respected in the framework of the agreement as a whole. Civil society organisations have, apparently, been granted an important role in the follow-up and monitoring of these chapters. Civil society meetings have become a standard and quite prominent feature of EU free trade agreements, specifically with a view to promoting labour and environmental principles. In this CLEER Paper, we address three basic questions about these meetings: (1) how do they look like (features), (2) what are they for (purposes), and (3) how can we evaluate them (assessment)? In doing so, we take stock of current developments (empirical contribution) and propose frameworks for further examination (analytical contribution). Our empirical data are mainly based on interviews and participant observation in relation to the EU-Peru-Colombia, EU-Central America and EU-Korea agreements. Our analytical frameworks are developed in order to study the features of the civil society meetings on the one hand, and in order to make normative evaluations on the other hand. When it comes to evaluating the success of the civil society meetings, we argue that this ultimately hinges on one's perspective on civil society, democracy and development in the context of international trade. In conclusion, we express some critical concerns on the (so far) limited role of the civil society meetings, while also indicating that it would be too early to dismiss their potential relevance in the future.

LIST OF CONTRIBUTORS

Jan Orbie is Associate Professor at the Department of Political Science and Director of the Centre for EU Studies at Ghent University (Belgium). He researches and teaches on the European Union's external relations, including conceptual debates on 'normative power' and external trade, social, development, humanitarian aid and democracy promotion policies of the EU.

Deborah Martens is a PhD researcher at the Centre for EU Studies at Ghent University (Belgium). She works on the interdisciplinary research project 'When EU trade politics and farm economics meet', concerning the impact of EU trade on social development in Latin America. Her research focusses on how labour conditions in the agricultural sector are influenced by trading with the EU.

Lore Van den Putte is a PhD researcher from the Research Foundation Flanders (FWO) at the Centre for EU Studies at Ghent University (Belgium). She recently submitted her doctoral dissertation which deals with the trade-labour linkage of EU (and US) trade agreements with Peru, Colombia, and Korea.

ABBREVIATIONS

AA	Association Agreement
ACP	African, Caribbean and Pacific
ACTA	Anti-Counterfeiting Trade Agreement
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum of African, Caribbean and Pacific States
CC-SICA	Comité Consultivo del Sistema de la Integración Centroamericana
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CSM	Civil Society Meeting
CSO	Civil Society Organisation
DAG	Domestic Advisory Group
EAC	East African Community
ECOWAS	Economic Community of West African States
EEAS	European External Action Service
EESC	European Economic and Social Committee
EP	European Parliament
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
GSP	Generalised System of Preferences
ILO	International Labour Organisation
NAC	National Advisory Committee for Labour Provisions of US Free Trade Agreements
NGO	Non-Governmental Organisation
SD chapter	Chapter on Trade and Sustainable Development
T-SIA	Trade Sustainability Impact Assessment
TTIP	Transatlantic Trade & Investment Partnership
WTO	World Trade Organization

INTRODUCTION¹

A novelty in the new generation of European Union (EU) free trade agreements (FTAs) is the chapter on trade and sustainable development (SD chapter). This includes references to labour and environmental provisions that should be respected in the framework of the agreement as a whole. This should be seen in the context of the growing recognition of the linkages between trade and sustainable development. The Lisbon Treaty mentions 'fair' alongside 'free' trade as one of the Union's external policy objectives (Article 3.5 TEU) and stipulates that the EU's trade policy 'shall be conducted in the context of the principles and objectives of the Union's external action' (Article 207.1 TFEU).² The Trade for All strategy of the European Commission strongly emphasises 'values' and 'responsible trade'.³

Civil society organisations (CSOs) have, apparently, been granted an important role in the follow-up and monitoring of these chapters on trade and sustainable development. Although civil society was mentioned in previous trade agreements, it is only since the EU-Korea agreement that civil society meetings (CSMs) have become a standard and quite prominent feature of EU FTAs, specifically with a view to promoting labour and environmental principles.⁴ While the US and Canada include to some extent civil society in their trade-labour nexus, the EU has a more specific and elaborate approach towards civil society involvement. These meetings arguably reflect the distinctive, 'cooperative' approach of the EU, which emphasises dialogue and collaboration over sanctions.⁵ The SD chapters are excluded from the general dispute settlement system of the FTA

¹ The paper reflects ongoing research at the Centre for EU Studies. The authors would like to thank the two anonymous reviewers, Tamara Takács and the participants of the conference 'EU Trade Policy at the Crossroads – between Economic Liberalism and Democratic Challenges' (Vienna, 4-6 February 2016), the workshop on 'EU Contributions to Equitable Growth and Sustainable Development' (Leicester, 20 April 2016), the EU in International Affairs V Conference (Brussels, 11-13 May 2016) and in particular San Bilal, Ferdi De Ville, Annelien Gansemans, Tony Heron, John Hilary, Stephen Hurt, Mark Langan, Axel Marx, Myriam Oehri and Sophia Price for their feedback on earlier versions.

² See also W. Douma, 'The promotion of sustainable development through EU trade instruments', in L. Pantaleo and M. Andenas (eds.), *The European Union as a Global Model for Trade and Investment*, Research Paper Series No. 2016-02, University of Oslo, Faculty of Law Legal Studies 2016.

³ European Commission, 'Trade for all: Towards a more responsible trade and investment policy', COM(2015)497.

⁴ Our definition of 'civil society' follows the practice of the EU, referring to a wide range of non-state actors including most importantly labour, environmental and business groups, but also organisations working on for instance human rights, animal rights, and consumer interests. This is a wider definition than standard definitions of civil society as 'not for profit organisations' which thus exclude business associations. See P. Bouwen, 'Business Interest Representation and legitimate European Governance', in S. Smismans (ed.), *Civil Society and Legitimate European Governance* (Cheltenham: Edward Elgar 2006), 279-280.

⁵ M. Oehri, 'Comparing US and EU labour governance 'near and far' – hierarchy vs network?', 22 *Journal of European Public Policy* 2014, 731-749; E. Postnikov and I. Bastiaens, 'Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements', 21 *Journal of European Public Policy* 2014, 923-940.

as a whole. When a violation of labour or environmental provisions arises, the issue can be discussed in governmental consultations. As a last resort, a panel of experts can be established. However, no sanction is foreseen if the panel's recommendations are not followed up.

In its discourse about the new trade agreements, the European Commission never fails to emphasise the importance of the SD chapter and the CSMs it includes. In recent years, several civil society meetings have been organised in Brussels and in the EU's trading partners. For example, this has been the case for the EU-Korea, EU-Central America and EU-Peru-Colombia agreements and more recently also the agreements with CARIFORUM⁶, Georgia, Moldova and Ukraine⁷. The number of such meetings is likely to increase exponentially, as some trade agreements still need to enter into force (e.g., with Ecuador (part of Peru-Colombia agreement), Singapore, Vietnam, Canada, the West African States (ECOWAS) and the East African Community (EAC))⁸, some are still being negotiated (e.g., with the US, Japan and the Philippines), and some will be updated in the near future (Mexico, Tunisia) or are planned to be (re)launched (e.g., with Mercosur and Indonesia).⁹

Despite their unique position in EU trade agreements, their importance in EU discourse, and their recent proliferation, we know surprisingly little about the CSMs. We do not know how they work and we know even less about how successful they are. Against this backdrop, this CLEER Paper aims to better understand the CSMs. Specifically, we address three questions: (1) how do they look like (features), (2) what are they for (purposes), and (3) how can we evaluate them (assessment)?

Hence, the paper has a descriptive and evaluative component. Both of these dimensions are important. First, the features of the CSMs differ from agreement to agreement. Even though they seem to be based on the same template, a closer look at the treaty provisions (*de jure*) and their implementation (*de facto*) reveals a remarkable degree of variation. As will be shown in section I, the institutional set-up of the meetings varies significantly. This complexity is likely to further increase when more EU trade agreements go into force. Second, evaluating the meetings proves to be a difficult exercise. Existing assessments diverge starkly from providing a promising avenue for civil society empowerment to being no more than a fig leaf. As we will indicate in this paper, this confusion concerning different evaluations can be traced back to fundamentally different views

⁶ The Caribbean Forum of African, Caribbean and Pacific States are Antigua and Barbuda, the Bahamas, Barbados, Belize, the Commonwealth of Dominica, the Dominican Republic, Grenada, the Republic of Guyana, Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

⁷ The EU-Ukraine Deep and Comprehensive FTA entered into force on 1 January 2016. However, the CSMs have not been established yet.

⁸ The latter two agreements do not contain elaborate provisions on CSMs in the framework of sustainable development. The Southern African Development Community does not refer to CSMs as a whole. However, one could expect the European Parliament to demand similar monitoring mechanisms as in the other agreements (as witnessed in a meeting organised by a member of the EP, Joachim Schuster, on monitoring mechanisms in the EPAs held in Brussels on 19 April 2016).

⁹ See also EESC, 'Briefing of the EESC secretariat on the functioning of Domestic Advisory mechanisms in EU Trade Agreements', on file with the author (Brussels 19 April 2016).

on the role of civil society in the context of trade, democracy and development. Even amongst those who favour civil society involvement, different perspectives exist on what the purposes of such meetings should be.

Our contribution is both empirical and analytical. Existing analyses have in general focused on whether the 'soft' or 'cooperative' approach of the EU can be effective,¹⁰ and on how this differs from the 'hard' or 'sanctioning' US approach,¹¹ but research into the potential contribution of the CSMs is quasi-absent. Empirically, we present recent and original data on the CSMs. These are based on the texts of the trade agreements, speeches and documents of relevant actors, the (limited) secondary literature available, more than 55 interviews conducted with policy-makers and stakeholders involved in the meetings in Belgium, Colombia, Peru and Costa Rica in 2014, 2015 and 2016, and participant observation during the Civil Society Dialogue Forum of the EU-Central America agreement (29 May 2015, Brussels) and the EU DAG meetings of the EU-Central America (1 March 2016, Brussels), Peru-Colombia agreement (7 April 2016, Brussels) and part of the CARIFORUM Consultative Committee (19 April 2016, Brussels). Because the majority of our empirical data relate to the CSMs organised in the context of the EU trade agreements with Korea, Peru-Colombia and Central America,¹² these will principally be discussed in this paper. In addition, evidence of other EU trade agreements will also be used where relevant.

Analytically, we elaborate frameworks for the comparative study of the features of the CSMs (descriptive dimensions, Figure 1) and for the assessment of their success (evaluative dimension, Figure 2). The construction of analytical frameworks is even more important than describing and evaluating the CSMs as they currently stand, since these meetings are 'moving targets' that will probably be altered and expanded in the next years and decades. As such, we aim not only to 'take stock' of current developments but also to lay the foundations for further research by providing comparative and evaluative frameworks. There have been widely diverging evaluations of the meetings – ranging from being a 'talking shop' legitimising free trade to 'empowering' marginalised groups – without however clarifying the underlying assumptions of such assessments.

Finally, we hope that this is a normative and policy-relevant contribution, not only because sustainable development is obviously important in the context of trade¹³, but also because we would argue that cooperative provisions in trade agreements can be successful even in the absence of enforceable provisions.¹⁴

¹⁰ B. Burgoon, 'The distinct politics of the European Union's "Fair Trade" linkage to labour standards', 14 *European Foreign Affairs Review* 2009, 643-661; H. Horn et al., 'Beyond the WTO? An anatomy of EU and US preferential trade agreements', 33 *The World Economy* 2010, 1565-1588; S. Meunier and K. Nicolaïdis, 'The European Union as a conflicted trade power', 13 *Journal of European Public Policy* 2006, 906-925; J.S. Vogt, 'Trade and Investment Arrangements and Labor Rights', in L. Blecher et al. (eds.), *Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms* (Chicago: ABA Book Publishing 2014), 121-176.

¹¹ See M. Oehri, E. Postnikov and I. Bastiaens, *supra* note 5.

¹² The states that are part of Central America are Panama, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua.

¹³ O. De Schutter, *Trade in the service of sustainable development: linking trade to labour* (Oxford: Hart Publishing 2015).

¹⁴ Van den Putte et al., 'What social face of the new EU trade agreements? Beyond the "soft" approach', European Trade Union Institute (ETUI) Policy Brief N° 13/2015, available at <<https://>

Moreover, the European Commission has indicated that the set-up and functioning of the CSMs could be further improved.¹⁵ In general, outcomes of this research can contribute to the academic and policy debate on the EU as a 'normative power'¹⁶ and/or 'market power'.¹⁷

The structure of the paper is in line with the three research questions. It also follows an increasing level of abstraction: we first need to know how the meetings function (features), and what they are intended to do (purposes), in order to eventually assess them (evaluation). Section I lists the distinctive features of the CSMs, referring to both *de jure* and *de facto* characteristics. This part consecutively elaborates on the institutional set-up, composition, organisation, and outcome of the CSMs. It provides the building blocks for a comparative analysis. Section II dissects the different purposes that can be (and have been) ascribed to the CSMs. We will show that these meetings can serve four analytically distinct purposes: instrumental (gathering support for FTA), functional (monitoring and information gathering on the implementation), deliberative (promoting democratic governance) and policy purposes (advising the governments). Section III builds on the previous parts by outlining an evaluative framework for assessing the success of the meetings. The objective of this framework is not to provide a definite evaluation of the current functioning of the CSMs, but rather to situate different assessments within wider debates in order to transcend unqualified judgements. The conclusion summarises the main findings and expresses some critical concerns on the (so far) limited role of the CSMs, even if it would be too early to dismiss their potential future relevance.

I FEATURES: WHAT DO THEY LOOK LIKE?

The institutional setting and specific features of the CSMs vary across the existing agreements. In this section, we will dissect and describe four *de jure* and *de facto* features (see Figure 1). These have been established 'abductively',¹⁸ meaning that they stem from the interaction between theoretical insights (secondary literature on trade policy, interest representation, civil society participation, and meeting management) and empirical data (interviews and field research on the EU-Korea, EU-Central America, and EU-Peru-Colombia agreements). It is important to systematically elaborate these features for two reasons. First, this establishes a framework for more systematic comparative analysis of existing agreements in future research. Second, any evaluation of the success (or failure) of the CSMs needs to take into account the specificities of the existing arrangements. In what follows, we will set out the specific features identified. While the normative evaluation of these features is part of the evaluative framework pro-

www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/What-social-face-of-the-new-EU-trade-agreements-Beyond-the-soft-approach.

¹⁵ Author's interview with EU official, Brussels, 6 May 2015.

¹⁶ I. Manners, 'The normative ethics of the European Union', 84 *International Affairs* 2008, 45-60.

¹⁷ C. Damro, 'Market power Europe', 19 *Journal of European Public Policy* 2012, 682-699.

¹⁸ J. Friedrichs and F. Kratochwil, 'On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology', 63 *International Organization* 2009, 703-731.

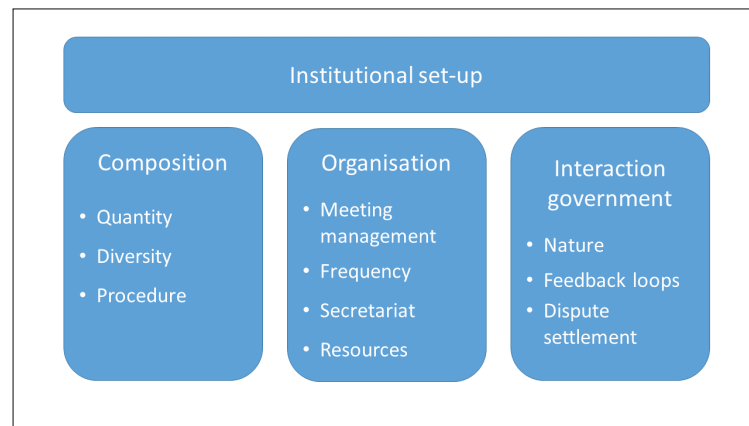


Figure 1. Comparative framework (features)

vided for in section III, we already provide some specific insights into how these can be assessed.

Institutional set-up

The first feature is the most overarching one, as it concerns the institutional framework within which the CSMs take place. The three features set out hereafter (composition, organisation, interaction government) should be regarded in light of this overarching institutional set-up. The institutional set-up consists of different bodies that are created in the framework of the agreement. In addition to the *de jure* formations, it is possible that other bodies are *de facto* involved. Important to notice is that, alongside these non-governmental bodies at the domestic and the transnational level, every agreement also sets up an intergovernmental body¹⁹ that meets annually in order to monitor the implementation of trade-related aspects of sustainable development. This body comprises of high-level senior officials of each Party.

As illustrated in Figure 2, at least five different constellations for CSMs currently exist:

1. A Domestic Advisory Group (DAG) in which civil society organisations of one Party meet.
2. A joint meeting of the domestic advisory groups (DAG-to-DAG meeting) of the Parties.

¹⁹ In the EU-Korea FTA this body is named 'Committee on Trade and Sustainable Development' and in the Peru-Colombia agreement 'Sub-committee on Trade and Sustainable Development' and finally in the Central American 'Board on Trade and Sustainable Development'.

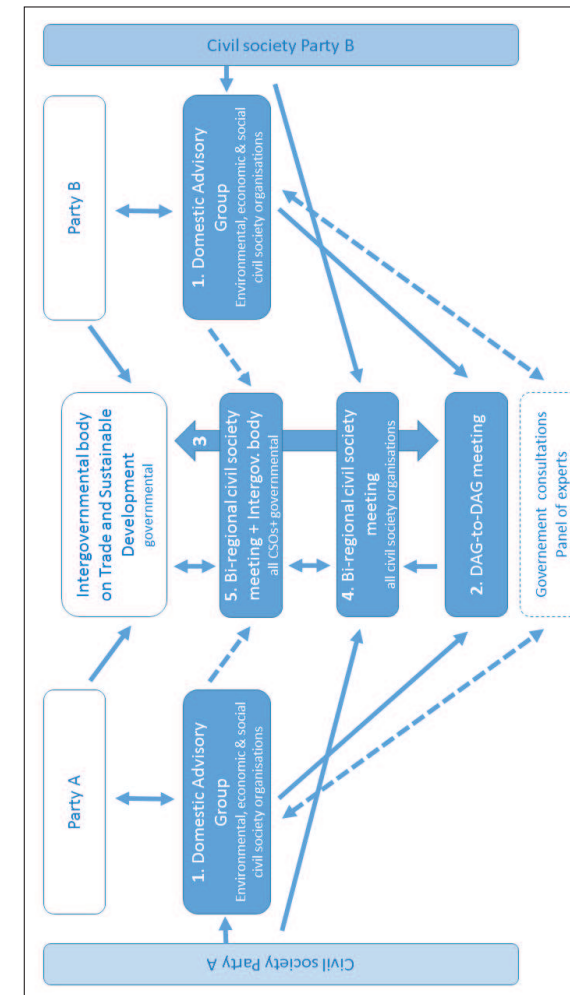


Figure 2 Institutional set-up: five constellations

3. In this constellation, the DAG-to-DAG meeting comes together with the inter-governmental body.
4. An open civil society meeting²⁰ where civil society organisations of the Parties meet without the presence of the intergovernmental body.
5. Civil society from different countries meets with the intergovernmental body.

Thus, the institutional framework can differ from agreement to agreement. First, differences exist between the *de jure* and *de facto* set-up of the mechanisms. For instance:

- The EU-Korea FTA formally creates 2 DAGs (1)²¹ and a DAG-to-DAG meeting, which is called the 'Civil Society Forum' (2), while *de facto* an open bi-regional civil society meeting (4) is organised in addition to the Civil Society Forum. Although only a limited number of interests should be consulted according to the agreement, in practice a wider range of interests can participate in a designated meeting.
- In contrast, the EU-Central America and the EU-Peru-Colombia agreements do not require the creation of new DAGs: Parties can also rely on existing groups or committees (1). These agreements also establish a bi-regional CSM (4). Moreover, in practice the EU-Central America agreement also creates a DAG-to-DAG meeting (2) as well as an open bi-regional civil society meeting with the intergovernmental body (5).
- The CARIFORUM agreement, as well as the Economic Partnership Agreements (EPAs) with West Africa and East Africa (which have not yet entered into force), only foresee a Consultative Committee, which is a closed meeting of CSOs of all the Parties where the intergovernmental body is also present (comparable to a DAG-to-DAG meeting with the intergovernmental body (3)).

Second, there is variation in the agreements on whether a new DAG (1) should be established or an existing group can be consulted:

- The EU-Korea FTA requires the establishment of a new DAG. All FTAs concluded thereafter explicitly mention the possibility to either convene a new DAG or consult existing groups. The formulation varies: the Peru-Colombia agreement stipulates that 'Each Party shall consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist' (Article 281), whereas the Central American agreement spell out that 'Each Party shall convene new or consult existing Advisory Groups on trade and sustainable development' (Article 294.4). Interestingly, the latter goes a bit further by stipulating (in a footnote) that, if existing groups are used, these should be offered 'the opportunity to reinforce and develop their activities with the new perspectives and areas of work' provided in the SD chapter.

²⁰ Here too the names of this constellation vary between the FTAs: the Peru-Colombia open CSM is called 'Dialogue with Civil Society', in the case of Central America it is called 'Civil Society Dialogue Forum' while in the case of Vietnam the agreement mentions a 'Joint Forum'.

²¹ The numbers between brackets refer to the constellation of the CSMs described above.

- In practice, new DAGs have been created (or are in the process of being created) under the Central American agreement, specifically within each of the Central American countries. In contrast, the Peruvian and Colombian government have designated already existing mechanisms. In the case of Peru, the government opted to use four already existing bodies to monitor labour provisions,²² and to use existing national technical working groups or commissions for environmental provisions. In the case of Colombia, the government decided to use the (malfunctioning) Permanent Commission on Salaries and Labour to deal with labour issues, and to use the National Council in Environment to deal with environmental issues. It is not always clear for participants in these already existing national mechanisms that in this context they are also tasked with discussing the sustainable development aspects of the EU trade agreement.²³
- The EU establishes a new, EU-wide DAG for every agreement.

Third, when the agreement includes more than one EU trade partner (i.e., inter-regional agreements), there are differences in how the DAGs (1) within and among these countries are organised:

- Of all the Central American DAGs, Costa Rica is the only country that has divided its DAG into three separate meetings for the labour, environment and business groups, with apparently no interaction between them. Each of the sub-DAGs is then characterised by more similar interests.
- While the EU creates an EU-wide DAG for every agreement (see above), such regional configurations have not been established by its trading partners, and interactions between the DAGs of EU trading partners seem quasi-absent. For instance, no meetings have taken place between the Peruvian and Colombian DAG. Similarly, it appears that there have been no meetings among the Central American DAGs to prepare DAG-to-DAG meetings (4).

Fourth, there is variation in the *de jure* and *de facto* participation to the open bi-regional CSM (4) as CSOs participating in the DAGs (1) do not necessarily participate in these meetings:

²² The National Council on Work and Employment, the National Council on Health and Safety at Work and the National Commission on Forced Labour and National Committee on Child Labour.

²³ The fact that both governments use already existing mechanisms, is deplored by civil society in both countries. They prefer the establishment of an *ad hoc* mechanism to deal with these issues. Overall, the provisions for CSMs in the EU-Peru-Colombia agreement are more restrictive than in most other agreements. It seems that the Peruvian and Colombian government negotiated these provisions with an eye to their existing mechanisms. For example, as opposed to many other agreements, it is not stated that the members of these mechanisms should be 'independent'. This comes as no surprise, given that the main mechanism for social dialogue in Peru (the National Council on Work and Employment) is chaired by the Minister of Labour. Furthermore, it is explicitly mentioned that 'the procedures for the constitution and consultation of such committees or groups [...], shall be in accordance with domestic law' (Art. 281).

- Only the trade agreements with Ukraine, Georgia, Moldova, Canada and Vietnam explicitly mention that members of the different DAGs will participate in an open bi-regional civil society meeting.
- Neither the Central American, nor the Peru-Colombia agreement spells out this necessity. However, the Central American members will *de facto* attend these meetings, while the Peruvian and Colombian DAG members have not been able to do so (*inter alia* because the DAGs do not really exist in these countries and because of budgetary constraints, see below).

Composition

The second feature concerns the composition of the CSMs, encompassing (i) the quantity of participants, (ii) the diversity amongst them, and the (iii) selection procedures for their participation.

The quantity (i) or the number of participants varies across the agreements. In some cases it is not specified, for example in the EU-Peru-Colombia FTA and in the EU-Central America agreement; in others, the maximum number of participants is determined in the rules of procedure, for instance the rules of procedure of Korea as well as the EU DAG for the Central American FTA specify that each DAG consists of a maximum of 12 persons. While the EU DAGs always have a circumscribed (and fixed) number of participants, the open CSMs organised for example in the framework of the EU-Central America agreement have a high number of participants. For now it is difficult to assess the number of participants in the CSMs in the partner countries, as lists of participation are not publicly available, and in some cases (e.g., Peru) doubts have even been raised about whether they effectively convene in order to fulfil their roles under the SD chapter.

Equally important is the diversity of the participants (ii). A distinction can be made between substantial diversity, geographical diversity, and diversity over time. First, as for substantial diversity, all the legal texts stipulate that CSMs encompass labour, business and environmental interests.²⁴ In practice, however, the groups participating in the CSMs can vary from being rather narrow to very broad. As mentioned earlier, the Costa Rican DAG is divided into three separate groups with similar interests, with virtually no interaction between the three DAGs and little knowledge of the members of the other groups. More diverse interests can be found for example in the European DAG for the EU-Peru-Colombia trade agreement, which includes groups like the European Telecommunications Network Operators' Association, the International Confederation of European Beet Growers, and the World Wide Fund for Nature. An even higher level of substantial diversity takes place when observers can be admitted to attend the meeting without actively contributing. This is the case in the Central American Civil Society Dialogue Forum (Fig. 2, no.4) and the EU-Korea DAG-to-DAG meeting (Fig. 2, no.2). We have no information about the

²⁴ This is the case for all agreements since Korea, except for the EU-Ukraine agreement in which no explicit reference to environmental interests is made (Art. 299) and the Peru-Colombia agreement which does not refer explicitly to economic or business stakeholders (Art. 281).

extent to which observers are invited. It should also be noted that, even though environmental interests are *de jure* included in the CSMs, in practice these groups are rarely part of the DAGs. For instance, Colombian environmental groups do not seem to be strongly represented in the EU-Peru-Colombia CSMs, and the representation of environmental groups in the European DAGs is limited (Fig. 2, no.1). They are also not widely represented at the open civil society meetings (Fig. 2, no.4).

Second, in terms of geographical scope, the meetings are more or less diverse depending on the number of countries involved. While the CSMs for the Korea agreement only contain CSOs from the EU and Korea, the Central-American mechanisms consist of CSOs from the EU and six Central-American countries, resulting in seven separate DAGs. In the case of Peru-Colombia this results in three separate DAGs. Third, there is diversity over time. Participation of CSOs and their representatives can be fixed or variable. This determines whether the same people are present through the series of meetings. In the EU-Korea DAG case, the same people have been meeting every year since 2012 until the re-composition in December 2015. In the case of the EU-Peru-Colombia and EU-Central America meetings, participating organisations have been changing. The (draft) rules of procedure of the EU DAG for the Central American agreement spell out that '[t]he members of the EU AG shall be appointed for a two-and-a-half-year term (aligned with the EESC mandate) with the possibility of renewal for individual members.' In the EU DAG meeting for Peru-Colombia it seems that membership is quite flexible. In the last meeting (7 April 2016) the members present agreed that the International Confederation of European Beet Growers and the Eurogroup for Animals would no longer be member and that the European Fruit and Vegetables Trade Association would be added.

Also the selection procedure (iii) varies across the CSMs: there is no set procedure, neither for the domestic, nor for the transnational meetings. The main issue in this context is whether organisations are invited by their government to participate or whether they can take the initiative to participate themselves. There is also a concern that Government Organised Nongovernmental Organisations (GONGOs) would be appointed. The EU-Peru-Colombia agreement stipulates that 'The procedures for the constitution and consultation of such committees or groups (the CSMs, authors) [...] shall be in accordance with domestic law' (Article 281); the agreement with Vietnam spells out that each Party shall appoint the members of the DAG (Article 15.4); and the CARIFORUM EPA (Article 232), EAC (Article 108.2) and ECOWAS EPAs specify that 'participation shall be decided by the EPA Council [intergovernmental body]'. More broadly, this issue relates to questions concerning (in)dependence from the government and existing ties with government. Overall, the trade agreements are not very detailed on the selection procedure and the procedures for the selection of members do not seem transparent.

In the EU, it seems that for each agreement the European Commission is sending out a call for interest among the organisations taking part in the Civil Society Dialogue on trade policy. Thereafter, it is unclear how specific organisations are selected. In order to have relevant CSOs participating, it seems that some European organisations and the Commission itself would like to select

particular members more directly.^{25,26} The rules of procedure of the EU DAG of the Central American agreement specify that '[i]f a seat occupied by a non-EESC member becomes vacant a new member shall be appointed by the EU DAG based on proposal made by the Chair, taking into account the need for balanced representation within the EU AG.'²⁷ Except for the requirement of 'balanced representation', it is unclear on what basis the Chair would propose a potential member.

In the EU's trade partner countries, the selection procedure seems even less transparent. In Korea, the government at first instance did not appoint the Korean Confederation of Trade Unions, one of the main labour federations in the country, and only did so after strong protest by the European Commission and the EU DAG. In Peru-Colombia the selection procedure is less relevant given that already existing mechanisms are used. This situation implies that CSOs that are not already part of these existing mechanisms, do not have the opportunity to discuss the sustainable development chapter within the domestic institutions. The only opportunity would be through the annual open bi-regional civil society meetings. In Costa Rica, the government composed the list of participants of the DAGs. Even though the participants are aware of their membership, many organisations are not actively involved and basically wait for instructions. Others are more proactive: two business Non-Governmental Organisations (NGOs) requested to be part of the labour group of the Costa Rican DAG and were also allowed to do so. In general little is known about the selection procedure in the Central American countries, except that for some of these governments, such as Honduras, it has been difficult to put forward independent CSOs to participate.²⁸ As for CARIFORUM, the selection of participants was the principal hurdle that caused a delay of six years in the formation its Joint Consultative Committee (Fig. 2, no. 3). The main reason was that all the Parties had to agree on the composition of this Committee.²⁹

Interestingly, the European Commission's hands-off approach towards the composition of CSMs in third countries is at odds with the oft-heard criticism about the EU's exclusion of critical organisations (or, e.g., religious organisations) in its civil society consultations with third countries. Even though the Commission has expressed its concern regarding the composition of the DAGs of some trade partners, it exerts little or no pressure on the respective governments to address these issues. The Commission places most of the responsibility with the trade partner, emphasizing its sovereignty to establish its own domestic mechanisms, and saying that the quality of the CSMs 'is hostage of the third country.'³⁰

²⁵ See author's interview, *supra* note 15.

²⁶ Author's interview with EU NGO, Brussels, 8 July 2015.

²⁷ EESC, 'Rules of procedure of the EU Advisory Group created pursuant to Title VIII (Article 294) of the EU-Central America Association Agreement' (Brussels 2015).

²⁸ See author's interview, *supra* note 15.

²⁹ Participant workshop, 'How to implement the monitoring of the EPAs?' hosted by MEP Joachim Schuster (Brussels 19 April 2016).

³⁰ Author's interview with EU official, Brussels, 15 April 2015.

Organisation

The third feature is organisation, which covers (i) meeting management alongside questions concerning (ii) a secretariat, (iii) the frequency of meetings, and (iv) available resources.

The literature on meeting management (i) identifies several rules of thumbs addressing the conduct of the different phases of a meeting, namely its preparation, facilitation, and follow up.³¹ These are transferable to the context of CSMs. First, preparations preceding the meetings include a timely decision of a time and place, a clear objective, a timely communicated and approved agenda, a review of the attendees and acknowledged rules of procedure. Honduras, hosting the CSMs of the Central American AA in 2016, waited until one month before the actual meetings to confirm the week (not yet the dates) in which the meetings would take place. This allowed little preparation time for the CSOs. Concerning the agenda, the rules of procedure of the EU DAG of the Central American AA spell out that it 'shall be sent out to the EU DAG members at least three weeks before the EU DAG meeting.'³² Whereas the rules of procedure of the DAG-to-DAG meetings of the EU-Korea agreement stipulate that the agenda shall be sent to the members no later than three months prior to the meeting. Concerning the attendees of the Costa Rican DAG (May 2015), informal telephone calls were made from the EU delegation to members of the DAG the day prior to the meeting to inquire intended participation. This effort was however an *ad hoc* initiative and not part of a standardized approach. Preparations for the CSM of the Peru-Colombia agreement, especially for the first edition in February 2014 in Lima, were far from optimal. Some organisations reported that only very few people were invited and that those that were invited only heard about it a few days before which hindered effective preparation and participation.

Second, facilitation during the meeting is enhanced by a chair and by the decision-making procedures. An impartial chair has an important role as a facilitator to keep the meeting on track in line with the agenda items and the time and manage the contribution of the participants. The EU DAGs, and DAG-to-DAG meetings that take place in Brussels, are chaired by the EESC as well as a co-chair from the partner country. The advantage of having a meeting led by the EESC may be that that this institution has more experience with this format than for example their Central American counterpart.³³ The DAG-to-DAG meetings taking place in the context of the EU-Korea FTA have two co-chairs (each conducting parts of a meeting), with the hosting Party playing a leading role. The rules of procedure stipulate that the co-chairs shall be responsible for the preparation, coordination and organisation of the DAG-to-DAG meeting's work. The decision-making procedures also have an inevitable impact on the meetings' outcome and participants' engagement. Again, in the case of the Korea DAG-

³¹ P. Anderson (2013). 'How to run effective meetings', (6 June 2013), available at <<http://www.publicfinance.co.uk/2013/06/how-run-effective-meetings>>; M. Doyle and D. Strauss, *How to make meetings work* (Chicago: Playboy Press 1976); G. Parker & R. Hoffman, *Meeting Excellence* (San Francisco: Jossey-Bass 2006).

³² See EESC, *supra* note 27.

³³ See author's interview, *supra* note 26.

to-DAG meeting (Fig. 2, no. 2), the rules of procedure mention that its members 'shall make every effort to take decisions by consensus'.³⁴ In case of disagreement between the two DAGs, the conclusions and the minutes of the meeting should reflect that disagreement. Both the (draft) rules of procedure of the EU DAG for the Peru-Colombia agreement and the Central American AA mention that it shall strive to take decisions by consensus. In case a vote is called for, decisions will be taken by a simple majority. In the event of a tie, the Chair shall have a casting vote (Fig. 2, no. 1).

Third, following up on the meeting, minutes or meeting notes can be drafted, circulated, and approved. Also, external communication to policy-makers and the broader public can be taken care of. Publication of the meeting documents can make it easier for stakeholders to be informed about the proceedings. This also makes it easier to hold the Parties accountable for how they address the input received from the meetings. Both these tasks are mainly carried out by the EESC, which drafts and circulates the minutes (which appears to be a lengthy process) and has a dedicated public webpage³⁵ to report on these meetings. Unfortunately, the information available on this website is very limited. Finally, the implementation of decisions should be monitored and the participants should be able to evaluate the meeting in order to improve future meetings. In this regard, the EU DAG for Peru-Colombia took the initiative to identify priority themes for the DAG meetings so that the next meeting would be more focused (April 2016). The Commission suggested aligning these priorities with those of the intergovernmental body to improve the coherence between both groups. The group of various interests of the EU DAG for Central America wrote a letter to its president with suggestions on how to dynamise the group in order to lead to more concrete results.³⁶ They suggest making an annual programme with precise objectives, more communication with their Central American counterparts, permanent contact with European and Central American authorities and independent monitoring tools.

A secretariat (ii) or central contact point can play a crucial role in guaranteeing the three above-mentioned aspects of successful meeting management. In our case, the EESC is an important actor in this regard. The EESC Rapporteur on Sustainable Impact Assessments and EU Trade Policy E. Pichenot expressed the importance of the EESC because it

'provides a logistical support to the activities of the Domestic Advisory Group and the Civil Society Forum. The EESC also ensures the longevity of these mechanisms, since it is an EU institution well anchored in the Treaties and is therefore a very stable partner of the European Commission and the European Parliament'.³⁷

³⁴ Civil Society Forum under the EU-Korea FTA, 'Rules of procedure of the Civil Society Forum under the EU-Korea FTA' (Seoul 13 September 2013).

³⁵ <<http://www.eesc.europa.eu/?i=portal.en.external-relations-europe-international-trade-monitoring>>.

³⁶ Group III EU DAG of the EU-Central America Association Agreement, 'Letter to the president of the EU DAG of the EU-Central America Association Agreement' (Brussels 17 February 2016).

³⁷ EESC, 'Civil society in action – monitoring sustainable development and wider FTA implementation: lessons to be drawn from the EU experience' (Brussels 2013).

However, some have deplored that the EESC, the secretariat of all CSMs under EU FTAs, would be too bureaucratic and therefore lacks flexibility.³⁸

There is no equivalent body at the side of the EU's trade partners. In the case of Central-America, the regional organisation 'Comité Consultivo del Sistema de la Integración Centroamericana' (CC-SICA) could take up this role, but it is unclear if it would have the mandate and the capacity.³⁹ In the case of Peru and Colombia, there seems to be no institutionalised coordination between civil societies of both countries. In the case of CARIFORUM, the secretariat of CARICOM (the Caribbean Community), which has a strong organisational capacity, could play this role.

Also the frequency (iii) of meetings varies considerably. Whereas the SD chapters of the discussed FTAs all contain the obligation to organise a yearly bi-regional CSM, there is no such prescription concerning the DAGs. The EU DAGs tend to meet more regularly: the EU DAG from the EU-Korea FTA has convened ten times since its first meeting in May 2012, the one from the Central American AA met six times since its establishment in October 2014, and the Peru-Colombia DAG has met three times since its first convocation in February 2015.

As for resources (iv), not all CSOs have the financial or personal capacities to travel in order to attend these meetings, let alone to be prepared adequately.⁴⁰ For the EU-Korea DAG-to-DAG meeting, which alternately takes place in Seoul and Brussel, funding can be provided for one side to travel to the partner country. Such funding is not provided for the meetings under the other agreements, even though it is being considered to use EU (development) budget for this.⁴¹ As a result, Peruvian civil society organisations have not been able to attend the meetings in Colombia, and vice versa.⁴² Alternatives are available, even though these are probably not optimal. For example, for the bi-regional CSM that took place in Colombia in June 2015, Peruvian CSOs sent issues to be addressed during the meeting of the Committee on Trade and Sustainable Development (i.e., the intergovernmental body) beforehand to the ambassador of the EU delegation to Peru as well as to the Peruvian Ministry of Foreign Trade.⁴³ However, there are no indications that the issues raised in this letter have been discussed in the intergovernmental meetings. In the case of the EU-Central American CSM in May 2015, the alternative of a videoconference was provided in all EU Delegations at the Central American side. This initiative only had limited success as only a few organisations made use of this possibility.

³⁸ Author's interview with EU NGO, Brussels, 12 April 2016.

³⁹ Author's interview with EU official, San Jose, Costa Rica, 26 May 2015.

⁴⁰ A. Montoute, 'Civil society participation in EPA implementation: How to make the EPA Joint CARIFORUM – EC Consultative Committee Work Effectively?', European Centre for Development Policy Management (ECDPM) Discussion Paper 119 (2011), available at <<http://ecdpm.org/publications/civil-society-participation-epa-implementation-cariforum-ec/>>.

⁴¹ See author's interview, *supra* note 15.

⁴² In the case of Colombia, it was mentioned that environmental groups do not have the capacity to participate in the domestic discussions.

⁴³ Red Peruana por una Globalización con Equidad, 'Carta a la Senora Embajadora Irene Horejs de la Unión Europea en el Perú' (2015).

In sum, the organisation of CSMs has had a rough start. The first meetings under the Peru-Colombia and Central American agreements were evaluated as a failure (*ad hoc* and clumsy) by both civil society and EU officials.⁴⁴ At the same time, stakeholders mention that the organisation of these meetings is still in an early phase and that they are still looking for the best approach.⁴⁵ While some meetings have been dealing with procedural issues for a long time (e.g., the Central American EU DAG meetings, Fig. 2, no. 1), others (e.g., the Peru-Colombian EU DAG meetings) have started to discuss more substantial issues.

Interaction with Governments

The fourth feature concerns the interaction between the CSMs and the Parties (or governments). We make a distinction between (i) the nature of the interaction, (ii) the governments' accountability to the outcomes of the meetings, and (iii) the involvement over CSOs in the dispute settlement mechanism.

As for the nature of the interaction (i), there are two possibilities. First, governmental actors may participate in the CSMs. Alternatively, civil society can meet both with and without government representatives. For instance, the EU DAG meeting of the Central American AA takes place with EU officials in the morning and without them in the afternoon. Accordingly, the bi-regional open CSM in June 2016 in Honduras include two sessions too: the first took place without governmental actors (Fig. 2, no. 4), whereas they were present on the second day (Fig. 2, no. 5). Interestingly, the presence of officials is evaluated in differing ways. In the April 2016 EU DAG for the Peru-Colombia agreement, officials from the European Commission and the European External Action Service (EEAS) were present during the whole meeting. Their presence was seen as beneficial as it shows that CSOs and officials share similar concerns⁴⁶ and because it makes it possible for CSOs to talk to the officials that directly speak to their counterparts in the third countries.⁴⁷ In Peru and Colombia, however, CSOs lamented that they never have meetings without officials present. From our observation it seems that in the CARIFORUM Consultative Committee the presence of the representative of the CARICOM secretariat is not necessarily conducive for an open discussion. Thus, although involvement of government officials may be beneficial in terms of providing an opportunity for civil society to voice their concerns and enhance their leverage, it may also impede an adequate monitoring and an open deliberation (see section III). Second, the outcomes of the CSMs can be formally communicated to the governments. For example, the two co-chairs of the EU-South Korea Civil Society Forum present the opinions of the meeting to the intergovernmental body.⁴⁸

⁴⁴ See author's interview, *supra* note 39.

⁴⁵ See author's interview, *supra* note 15.

⁴⁶ Author's interview with European NGO, Skype, 25 March 2016.

⁴⁷ Author's interview with European labour representative, Brussels, 22 July 2014.

⁴⁸ Related to this point, the issue of fixed versus variable participation (see *supra*) is also relevant. Costa Rican civil society members explained their frustration about meeting different government representatives at different meetings that were not aware of the topics discussed

The governments' accountability (ii) concerning the outcome of the CSMs concerns the question if a feedback loop is created between the governmental and civil society actors. Accountability may be enhanced if there is a formal feedback mechanism by which the Parties remit information on how the outcomes of the mechanisms have been used (or not).⁴⁹ In order to influence the policy process, transparent and accountable structures to channel input and receive feedback have to be put in place.⁵⁰ If participants feel that their views are not taken into account by the respective governments, satisfaction might be low among participants, as is the case for some participants in the Civil Society Dialogue organised by DG Trade in the EU,⁵¹ which might in turn lead to 'consultation fatigue'.⁵² Different degrees of responsiveness are possible and can be put on a continuum: government officials can (i) make a statement without listening to the CSOs (one-way communication, no responsiveness), (ii) listen to civil society and vice versa (two-way communication, low responsiveness), (iii) take the input of civil society into account (high responsiveness), and (iv) implement the advice by the mechanism in concrete policy (full responsiveness).

For example, the rules of Procedure of the EU-South Korea Committee on Trade and Sustainable Development (i.e., the equivalent of the intergovernmental body) stipulate that the Committee will consider the communications it receives from the DAGs and the DAG-to-DAG meetings and that it will make the operating conclusions it may adopt in respect of such communications available to both DAGs. In the Central-America agreement, it is mentioned that 'each meeting of the Board will include a session in which its members shall report on the implementation of this Title to the Civil Society Dialogue Forum. In turn, the Civil Society Dialogue Forum may express its views and opinions in order to promote dialogue on how to better achieve the objectives of this Title.' (Article 295.2) The EU-Peru-Colombia agreement mentions that the Board shall annually convene an open session with civil society 'in order to carry out a dialogue on matters related to the implementation of this Title.' (Article 282.1)

Also concerning the involvement of the CSMs in the dispute settlement (iii) of the SD chapter (see Figure 2 and *infra*), a significant variation between the agreements can be noticed. The Korea agreement mentions that the panel of experts should seek information and advice from either Party, the DAG(s) or international organisations (Article 13.15.1). In addition, it mentions that the report of the panel of experts shall be made available to the DAG(s) (Article 13.15.2). Furthermore it is mentioned that, among others, on the basis of the communications of the DAG(s), government consultations can be requested (Article 13.14.1). In this way, the DAG(s) have a direct role in the instigation of disputes. Neither

previously hereby impelling the discussions back to square one. Author's interview with Costa Rican NGO, San Jose, Costa Rica, 27 May 2015.

⁴⁹ M. I. Muguruza, 'Civil Society and Trade Diplomacy in the "Global Age": The European Case: Trade Policy Dialogue between Civil Society and the European Commission' Document, Inter-American Development Bank, Document for the Fourth Meeting of the Trade and Integration Network, available at <<https://publications.iadb.org/handle/11319/5717?locale-attribute=en>>.

⁵⁰ See A. Montoute, *supra* note 40.

⁵¹ Coffey, 'Evaluation of DG TRADE's Civil Society Dialogue in order to assess its effectiveness, efficiency and relevance' (Luxembourg: European Commission 2014).

⁵² See M. I. Muguruza, *supra* note 49.

in the Peru-Colombia agreement nor in the Central America agreement anything is said on the involvement of the CSMs in the dispute settlement. By contrast, CETA contains much more explicit and ambitious provisions in this regard.

Conclusion

Three general conclusions can be drawn from this overview of the features of the CSMs:

- There is a significant *de jure* and *de facto* diversity between the CSMs under the EU-Korea, EU-Central America and EU-Peru-Colombia agreements. The CSMs with Korea seem the most elaborate, as for example the establishment of new committees is required, and funding for travel is provided.
- These meetings are still in the early phase, whereby norms and practices on selection of participants, frequency of meetings, accountability mechanisms, etc., have clearly not yet been fully elaborated. While some features are permanent as they appear in the text of the agreement, many others are just 'snapshots' of a moving target.
- However, at this stage we can still not say much about whether the meetings should be assessed positively or negatively based on their institutional set-up, composition, organisation management, and even government interactions.

Indeed, while these observations provide some building blocks to evaluate the success (or failure) of the CSMs, we need to address as well more fundamental questions on the purposes of these meetings and on the role of civil society in trade, development and democracy. These will be addressed in respectively section II and section III.

II PURPOSES: WHAT ARE THEY FOR?

Whereas there is a vague but common understanding that they should give a human face to free trade, correct the negative impact of liberalisation, contribute to sustainable development, and involve CSOs in decision-making on this topic, it remains ambiguous what exactly is (are) the purpose(s) of the meetings. Are they supposed to provide (binding?) recommendations for the governments? Or are the meetings intended to foster a dialogue between civil society members, some of whom may not have a voice within the domestic political landscape? Or should they focus primarily on the shortcomings in the Parties' compliance with the agreement? Finally, would we dare to say that the meetings essentially serve to buy off public support for the trade agreement?

In this section we will show that the CSMs can serve four analytically distinct purposes. Partly drawing on Friedrich⁵³ we make a distinction between instru-

⁵³ D. Friedrich, 'Democratic Aspiration Meets Political Reality: Participation of Organized Civil Society in Selected European Policy Processes', in J. Steffek et al. (eds.), *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?* (Basingstoke: Palgrave Macmillan 2008).

mental, functional, deliberative and policy influence purposes. Hereafter we set out each purpose, illustrating it with quotes from the agreements and from a wide variety of actors involved in the meetings. Again, as in section I, we look at both the legal and practical components. It should be noticed from the beginning that the different purposes are not always mutually exclusive and that they can co-exist. However, it remains useful to make this analytical distinction, not the least because tensions may emerge between them. These also help to better understand diverging evaluations of the success of civil society meetings, as will be explained in section III.

Instrumental Purpose: Supporting the Free Trade Agreement

First, the CSMs have arguably been established in order to guarantee political support for EU FTAs. Since the Global Europe trade communication in 2006 the EU has been negotiating FTAs at a tremendous pace. Indeed, the EU is a strong proponent of the view that trade liberalisation is necessary for economic growth (especially since the crisis).⁵⁴ This new generation of FTAs struggles with a tension between the creation of an economic project that focusses globally on expansion and competition and a political project that pays attention to concerns such as social justice and sustainability.⁵⁵ It is therefore not surprising that FTAs have become increasingly contested by CSOs. Overall there is a mistrust and opposition of labour, human rights and environmental groups against trade liberalisation.⁵⁶ The growing politicisation of trade agreements already became clear with the protests in Seattle (1999) against the launch of a new round of trade negotiations in the World Trade Organisation (WTO) as mentioned above and with the 'Stop EPA Campaign' (2006) against the EPAs between the EU and the countries from Africa, the Caribbean and the Pacific (ACP). Apart from civil society movements (both in the EU as well as in trade partner countries), members of the European Parliament (EP) have voiced critical concerns. The Lisbon treaty, which entered into force in late 2009, increased the competences of the EP. Due to its enhanced formal role, the EP should be regularly updated on where negotiations are going and is required to give its consent to any trade agreement. The rejection of the Anti-Counterfeiting Trade Agreement (ACTA) sent a clear message that the EP is able and willing to use its additional power.⁵⁷ In this capacity the EP has repeatedly emphasised her requirements concerning the

⁵⁴ European Commission, 'Global Europe: Competing in the world', COM(2006)567; European Commission, 'Trade, Growth and World Affairs', COM(2010)612; See European Commission, *supra* note 3; G. Siles-Brügge, 'Resisting Protectionism after the Crisis: Strategic Economic Discourse and the EU-Korea Free Trade Agreement', 16 *New Political Economy* 2011, 627-653.

⁵⁵ L. Ford, 'EU Trade Governance and Policy: A critical perspective', 9 *Journal of Contemporary European Research* 2013, 578-596; K. Ulmer, 'Trade embedded development models', 31 *The International Journal of Comparative Labour Law and Industrial Relations* 2015, 305-329.

⁵⁶ See EESC, *supra* note 35.

⁵⁷ L. Van den Putte et al., 'The European Parliament's New Role in Trade Policy: Turning power into impact', Centre for European Policy Studies (CEPS) (2014) available at <<https://www.ceps.eu/publications/european-parliament%E2%80%99s-new-role-trade-policy-turning-power-into-impact>>.

inclusion of human and labour rights and civil society involvement in trade agreements through resolutions⁵⁸ as well as oral and written questions.

In the run up to the EU-Peru-Colombia FTA the EP, concerned about the human rights situation in those countries, explicitly advocated on several occasions a 'strengthening of the monitoring and dispute settlement mechanisms for breaches of human rights and sustainable development and the involvement of civil society in the implementation process'.⁵⁹ In response to this, EU officials and trade commissioners in speeches often stress the inclusion of such mechanisms. During the debate in the EP on the same agreement, the then trade commissioner K. De Gucht had to reply to requirements such as:

'Against this background, Parliament is, of course, investigating very carefully, [...] whether this trade agreement with Colombia and Peru meets these requirements [...]. The issues include the extent to which civil society is included in the process of implementing the trade agreement, the independence of its involvement and the options for instigating complaint procedures.'

And along the same line:

'We also want to see both in Peru and Colombia the establishment of permanent institutionalised mechanisms that guarantee the role of civil society'.⁶⁰

Protests against EU trade policy have reached unprecedented highs with negotiations on a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US. Since the start of the negotiations in 2013, public scrutiny of EU trade negotiations has only increased.⁶¹ While some oppose 'neoliberal' free trade per se, others warn against the possible negative social impact of free trade if not well managed.

Creating CSMs in the context of the SD chapter indicates not only that the FTAs have a social and environmental face, but also that the parties intend to involve civil society actors in policy-making on these issues. It solidifies the belief that the EU and the third country government are not only interested in free trade, but also in a genuine partnership that promotes sustainable development. At least, it signals the Parties' intention to balance these market-enhancing provisions with more interventionist policies. Or to put it in De Gucht's words:

⁵⁸ Such as European Parliament, 'Report on human rights and social and environmental standards in international trade agreements', 2009/2219(INI); European Parliament, 'Report on EU's trade relations with Latin-America', 2010/2026(INI).

⁵⁹ Council of the EU, 'Summary record of the meeting of the European Parliament's Committee on International Trade (INTA)' (Brussels 25-26 April 2012).

⁶⁰ European Parliament, 'Debate on EU trade agreement with Colombia and Peru', (Strasbourg 22 May 2012).

⁶¹ F. De Ville and G. Siles-Brugge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership*, (Hoboken: Wiley 2015). See also De Ville, F., Orbie, J., Van den Putte, L. (2016) 'TTIP and Labour Standards', European Parliament, Study for the EMPL Committee, 14 June. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578992/IPOLE_STU\(2016\)578992_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578992/IPOLE_STU(2016)578992_EN.pdf).

'With all of these safeguards, I hope you will agree that the agreement is strong enough to ensure that the parties' commitments on labour, human rights and the environment are consistently upheld'.⁶²

At most, it suggests that trade and non-trade objectives are compatible and mutually reinforcing. In this view, trade liberalisation will be beneficial for sustainable development, and the CSMs play a role in this achievement. As is stated in the EU-Peru-Colombia trade agreement:

'The Parties recognise international trade, productive employment and decent work for all as key elements for managing the process of globalisation, and reaffirm their commitments to promote the development of international trade in a way that contributes to productive employment and decent work for all.' (Article 269.1)

The literature on global governance has long recognised that involving public participation in global governance arrangements (such as a trade agreement) helps to improve the democratic legitimacy of such arrangements.⁶³

Not surprisingly, however, this purpose can also be interpreted in a less optimistic manner. Some observers have lamented the SD chapter and the CSMs as a 'fig leaf'. The criticism reads that these ostensibly progressive elements effectively hide the real objectives of the agreement, which are to create free trade in line with the economic priorities of the Parties – and particularly of the EU, which is usually the stronger partner. By forging a broader support for the approval of the agreement, including its liberalisation schedules and regulatory commitments, the SD chapter and its CSMs are helping the Parties to 'sell' the agreement to their constituencies and can thus be reduced to a public relations stunt to improve the reputation of the trading partners. It is a symbolic act to increase the support for FTAs without expectations that they would be effective, an afterthought lacking serious ambitions.⁶⁴ Questions can be raised about whether they will effectively be implemented once the ratification has been secured. In this regard one Peruvian NGO representative remarked that the EU CSMs are not designed for civil society to monitor the implementation of labour norms (see next purpose *infra*), but rather as a good news show for governments to show civil society which actions they have undertaken in the past months.⁶⁵

Moreover, a perverse effect from the CSMs may be that critical civil society actors are being co-opted and their opposition is being neutralised.⁶⁶ By becoming a member of the institutions that serve to implement the agreement (e.g., monitoring labour rights and environmental principles), it becomes more difficult to oppose the fundamentals of the agreement (e.g., opposition against the prin-

⁶² K. De Gucht, 'Public Hearing of the Committee on International Trade at the European Parliament: EU-Colombia and Peru Trade Agreement', SPEECH/12/142, (2012).

⁶³ S. Meunier, 'Trade Policy and Political Legitimacy in the European Union', 1 *Comparative European Politics* 2003, 67-90; J.A. Scholte, 'Civil Society and Democratically Accountable Global Governance', 39 *Government and Opposition* 2004, 211-233.

⁶⁴ G. van Roozendaal, 'Labour standards as an 'afterthought' in trade agreements: the South Korea case', Conference Paper EUIA V (Brussels 2016).

⁶⁵ Author's interview with Peruvian NGO, Lima, 9 December 2015.

⁶⁶ For a critical analysis of the 'rhetoric of participation' in development, see B. Cooke and U. Kothari, *Participation: the new tyranny?* (London: Zed books 2001).

ciple of free trade). Some CSOs would prefer not to have a trade agreement, but once it has been established, they consider making use of the opportunities provided by the agreement in order to maximise their impact on the implementation process. One opponent of the Central American AA decided, after opposing the agreement as a whole, to join the EU DAG because then at least they would still have a platform available to fight possible negative consequences of the agreement.⁶⁷ For the same reason, those CSOs that most strongly opposed the EPAs are most interested in being involved in the monitoring mechanisms, whereas the less critical organisations are often not interested.⁶⁸ There is a clear recognition that the CSMs present opportunities to undo the possible harms caused by the implementation of the trade agreements. However, there is a risk that through the process opposition is being silenced and/or civil society members become less critical and more 'constructive'.

In the literature, this has been called the insider versus outsider dilemma.⁶⁹ This dilemma has been clearly recognised by several civil society actors that we interviewed. Engaging in some self-reflection about his role in the EU DAG under the Peru-Colombia agreement, one member stated that 'before we were shouting against the agreement on the streets, today we are helping to implement it inside this building.'⁷⁰ Two years before, another participant of these CSMs had expressed it as follows:

'You see, this is a governmental process and then we're asked to come in already to basically defend these free trade agreements. Now many of us [...] have substantial conflicts and issues with the kind of free trade agreements and the economic agenda behind it. And for the Commission, for the government, this is a way to say we're smoothing with the edges and we get civil society in there and they can help us to address the worst issues. But the fundamental drivers and the way we design trade relations remain contentious. At least for us. [...] It's a way to invite the protest on the street into the agreement.'⁷¹

Also within the third countries, some CSOs are struggling with the insider-outsider dilemma. Others are reluctant to engage in the EU trade agreement as a whole for pragmatic reasons, since they assume that the EU trade agreements' mechanisms will be less effective than those under the US agreements⁷². Finally, some CSOs, including trade unionists, would like to be involved in the CSMs, but this does not happen because their government does not facilitate their participation and/or because of a lack of funding and capacities.

The purpose to guarantee support for trade agreements is mostly 'ex ante': it is most relevant during the negotiations and becomes less pertinent once the Parties have ratified the agreement. If the latter is the case, the purpose has mostly been achieved. Although it is also important for the Parties to ensure that

⁶⁷ Author's interview with European NGO, Brussels, 1 March 2016..

⁶⁸ Author's interview with European NGO, Brussels, 8 June 2016.

⁶⁹ R. J. Spalding, 'Civil Society Engagement in Trade Negotiations: CAFTA Opposition Movements in El Salvador', 49 *Latin American Politics and Society* 2008, 85-114.

⁷⁰ Participant EU DAG of the EU Peru-Colombia agreement (Brussels 7 April 2016).

⁷¹ Author's interview with European NGO, Brussels, 19 June 2014.

⁷² Author's interview with Peruvian NGO, Lima, 2 March 2016.

agreements do not face too much opposition while they are in practice, this is less of an issue since it is more difficult to withdraw an existing agreement than to prevent the ratification of a new one. Nonetheless, it seems that once organisations take part in the CSMs, they try to play a constructive role and encourage each other not to remain stuck in protest against the FTA. In this regard Colombian CSOs, in a meeting with the EU delegation in Bogotá, urged a fellow Colombian anti-FTA organisation to play a more constructive role. In short, the message was that such meetings should not be used to discuss the benefits and disadvantage of free trade, but rather to make concrete recommendations. Thus, also after an agreement entered into force, the CSMs can serve the purpose of marginalising opposition to FTAs.

According to this purpose the outcome of the meetings is not that important: what counts is merely the fact that civil society is involved in the implementation. However, other purposes come to the fore once an agreement has been ratified, as will be explained below.

Functional Purpose: Monitoring and Information

Second, the CSMs were established to monitor the implementation of the SD chapter, report on the advancements, and signal possible defaults. This monitoring and gathering of information is seen as a major purpose in the texts of the agreements and in EU discourse. For example, former Trade Commissioner K. De Gucht stated that the goal is to raise concerns:

'As governments we will depend on their active support in bringing their concerns on labour or environmental matters to our attention.'⁷³

The current Trade Commissioner, the Swede C. Malmström, puts it like this:

'We also need to make sure that civil society and business organisations are properly consulted and integrated in our work so we have the right information.'⁷⁴

Involved civil society actors also confirm this role as illustrated in the minutes of a EU-Central American CSM:

'Those present reiterated their commitment to fulfilling the role laid down in the Trade and Sustainable Development Title of the Association Agreement, namely to monitor implementation of the Title and to provide advice to the Parties to the Agreement.'⁷⁵ (for the 'advice' purpose, see *infra*)

⁷³ See K. De Gucht, *supra* note 62.

⁷⁴ C. Malmström, 'The way ahead for the EU-Cariforum Economic Partnership Agreement' (Brussels, 16 July 2015).

⁷⁵ EESC, 'Summary of the discussion held during the joint meeting of the European and Central American civil society advisory groups' (Brussels, 28 May 2015).

One of the eight elements of the EU-Vietnam trade deal, according to the Trade-EU factsheet by the Commission, is '**civil society monitoring** of commitments on labour in line with ILO standards' [bold in original].

According to this logic, CSOs are regarded as experts on the ground that bring together information and can detect and then signal problems with implementation. Putting it more strongly, this can also be seen as the 'watchdog' role of the CSMs. Two issues are worth noticing with regard to this purpose. First, this implies that the EU and the partner country delegate the monitoring of the implementation of the sustainable development commitments (partly) to the civil society bodies. Theoretically, this can be captured in terms of the principal-agent framework. Although principal-agent theory has been used extensively to analyse EU trade policy negotiations,⁷⁶ the CSMs have not yet been examined in this framework. Specifically, a principal-agent theory would analyse how the Parties to the agreement (i.e., the principals) create an external body (i.e., the agent) in order to monitor the implementation of the agreement. This delegation takes place because of two reasons: to increase efficiency and to circumvent the collective action problem.⁷⁷

Delegating this monitoring task to civil society might be more efficient given that these often have more expertise on the ground than the Parties do. For example, the European Commission and its DG Trade have been criticized for not having sufficient expertise in monitoring the sustainable development and human rights conventions of the Generalised System of Preferences (GSP) (plus) system, whilst relying mostly on a superficial assessment of the reports of international monitoring bodies (such as the International Labour Organisation (ILO)).⁷⁸ In addition, these institutions have been criticised for the late and/or limited Trade Sustainability Impact Assessments (T-SIA) relating to bilateral trade agreements that should be undertaken during trade negotiations to assess the impact on sustainable development.⁷⁹ Second, another advantage of creating an 'agent' in the form of CSMs is that a critical body is being created which can alert when deficiencies occur. This delegation constitutes a solution to the collective action problem whereby both Parties delegate the control over the implementation of an agreement to a third party. This may be particularly relevant when third party governments are not able or willing to provide the necessary information on the

⁷⁶ C. Damro, 'EU Delegation and Agency in International Trade Negotiations: A Cautionary Comparison', 45 *Journal of Common Market Studies* 2007, 883-903; T. Delreux and B. Kerremans, 'How Agents Weaken their Principals' Incentives to Control: The Case of EU Negotiators and EU Member States in Multilateral Negotiations', 32 *Journal of European Integration* 2010, 357-374.

⁷⁷ M. Pollack, 'Delegation, agency and agenda-setting in the European Community', 51 *International Organization* 1997, 99-134.

⁷⁸ J. Orbie and L. Tortell, 'The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?', 15 *European Foreign Affairs Review* 2009, 663-681; S. Velluti, 'Human rights conditionality in the EU GSP scheme: a focus on those in need or a need to refocus?', in N. Ferreira and D. Kostakopoulou (eds.), *The human face of the European Union: is EU law and policy humane enough?* (Cambridge: Cambridge University Press 2016 (forthcoming)).

⁷⁹ S. Stephan, 'What does civil society expect from TSIA?' Macroeconomic Policy Institute (IMK) presented at trade conference 'EU Trade Policy at the Crossroads' (Vienna, 5 February 2016) available at <http://www.oefse.at/fileadmin/content/Downloads/tradeconference/Stephan_Wien_5.2.2016_final.pdf>.

implementation of the commitments made in the SD chapter. For example, CSMs could reveal the information that one of the governments is lowering labour protection in order to attract investment. In brief, this system lessens the costs for the governments themselves to closely monitor the situation on the ground, and it enables them to control each other's implementation.⁸⁰

This also implies that creating a monitoring agent may actually strengthen the power of the governments (principals). CSMs do not necessarily take power away from the governments. On the contrary, they serve to support the goals of the 'principals'. The latter remain the powerful actor in the principal-agent relationship. They determine the conditions under which the CSMs can work and what is done with the information provided. Although policy advice may be the ultimate goal (see *infra*), this purpose is analytically distinct. To some extent CSOs are the ears and eyes of the European Commission and its trading partner on the ground; and it is up to the Parties (the 'principals') to decide how the information will be followed up. That they should not be involved in policy-making, was made very explicit in the EU – Central American Association Agreement:

'For greater certainty, policy making and other such typical government functions shall not be delegated to the Civil Society Dialogue Forum.' (Article 295)

Deliberative Purpose: Dialogue and Deliberation

Third, the civil society meetings aim to provide a forum for dialogue and deliberation, thereby contributing to the more general purpose of democratic governance. Instead of emphasising effective monitoring (outcome-oriented goal), this purpose emphasises more the intrinsic democratic and empowering potential of the discussions with(in) civil society (process-oriented purpose). In other words, organising a structured dialogue between members of civil society and with the governments is seen to contribute to the democratic quality of the agreement. This is not so much about the substance of the discussions (sustainable development in a trade context) but most of all about the (deliberative) process in which this is addressed. Dialogue can be a purpose in itself. Not only is it important to engage in a sectorial dialogue between the governmental parties to the agreement (e.g., on issues like customs, agriculture, investment, and indeed also labour and environment), but also members of civil society should be involved in open and transparent discussions on the trade agreement. The underlying assumption of such a 'governance' approach is that it makes the political decision-making system more democratic.⁸¹

Theoretically, this reasoning draws on the Habermasian ideal typical concept of 'public sphere'. Public sphere denotes a space where citizens can deliberate based on rational arguments. Deliberation essentially means that discussions are based not on power relations and self-interest, but on critical and rational

⁸⁰ See M. Pollack, *supra* note 77.

⁸¹ J.A. Scholte, 'Civil Society and Democracy in Global Governance', Centre for the Study of Globalisation and Regionalisation (CSGR) Working Paper No. 65/01 (January 2001), available at <http://wrap.warwick.ac.uk/2060/1/WRAP_Scholte_wp6501.pdf>.

arguments on issues of common concern.⁸² Even if the CSMs organised in the framework of EU trade agreements with third countries are far removed from the Habermasian ideal type of the French salons or the British coffee houses in the 18th century, an underlying purpose of deliberative dialogue can also be discerned. There are also clear links with the EU's approach to 'democratic governance'. 'Governance' has featured as an objective of the EU since the early 2000s.⁸³ Whereas in its external relations the EU originally promoted the effectiveness dimension of 'good governance', since the mid-2000s it started to emphasize 'democratic governance' more as a central objective. Against this background, the participation of civil society (or 'non-state actors') has become an increasingly important feature. Democratic governance also implies a stronger emphasis on transnational cooperation at the sectorial level.⁸⁴

According to suggestions by some actors, the CSMs should open up space for an open and critical dialogue beyond the (governmental) Parties of the agreement. Their main added value, according to this perspective, lies not so much in the monitoring of compliance with labour standards (previous purpose), but more fundamentally in their potential to foster a better understanding of common concerns. For example, the document on the EU DAG for the Korea agreement states:

'In spite of the differences in terms of culture and approaches, both parties showed a strong willingness to have a dialogue and reach reciprocal understanding.'⁸⁵

The rules of procedure of the EU-Korea Civil Society Forum (DAG-to-DAG meeting, Figure 1, no. 2) stipulate:

'The Civil Society Forum is a platform in which the organisations of civil society in Korea and in the European Union can exchange views and discuss matters related to the sustainable development aspects of the trade relations between the parties.'

Forging dialogue and common understanding is all the more important when it comes to sustainable development, given the sensitivity of the debate with some of the EU's trading partners. Especially regarding labour rights, there are still concerns about alleged EU (neo-colonial) interference in third countries' domestic sovereignty and about the EU's misuse of ethical concerns for protectionist interests. Whereas these fears may not be entirely justified (sovereignty is apparently less problematic in other chapters of the agreement where enforcement is much stronger, and the EU's soft approach barely allows for protectionist abuse), and may in fact be used as an excuse for lack of progress in compliance with labour rights commitments, it is of utmost importance to discuss different

⁸² J. Habermas, *The structural transformation of the public sphere: An inquiry into a category of bourgeois society*. (Cambridge: MIT Press 1991).

⁸³ European Commission, 'European Governance: a white paper', COM(2001)428.

⁸⁴ A. Wetzel, 'Governance Perspective: Democratic Governance promotion Through Functional Cooperation', in A. Wetzel and J. Orbie (eds.), *The substance of EU Democracy Promotion: Concepts and Cases*. (Basingstoke: Palgrave 2015).

⁸⁵ European Commission, 'Meeting with the EU Domestic Advisory Group (DAG) under the EU-Korea Free Trade Agreement' (Brussels, 2012).

views of how trade and labour rights are interlinked and how problems can be addressed efficiently and legitimately. Arguably, this would ideally happen in an even wider context that also involves other international actors such as the ILO, which has the international legitimacy on fundamental labour rights and expertise through its supervisory bodies. The trade-labour linkage remains an extremely complicated conundrum that begs for an open and rational dialogue between all partners involved, and, in theory, this is what the CSMs could provide for.

Perhaps even more importantly, these dialogues may empower certain civil society actors that are currently marginalised within the domestic context. While the process of empowerment is typically a process that should originate from the inside, actors like the EU can facilitate it by promoting social dialogue or establish venues for participation.⁸⁶ They could make it possible for marginalised actors to transcend the domestic political arena and have their voice heard within a wider, transnational setting. In political science terms, they create a new 'opportunity structure' for actors to raise their concerns and understand the power structures they are a part of.

The former Head of the Unit on the GSP and Sustainable Development puts it like this:

'But we do think that this is a very important element, and it is thanks to our FTA that we have given a voice to those trade unions in the trade context on labour rights.'⁸⁷

Commissioner Malmström's spokesperson mentioned the same potential regarding the civil society involvement in an envisaged FTA with Malaysia:

'As in other FTAs, the Commission will pursue ambitious provisions aiming at fostering governments' accountability and civil society empowerment – and thereby strengthening a supportive environment for human rights. This is the case, for instance, for rules on transparency and on the direct involvement of civil society in the implementation of provisions on trade and sustainable development.'⁸⁸

Empowerment can be strengthened through the forging of alliances with other domestic and international actors, which could be created through the CSMs. As such the CSMs could foster the creation of 'transnational advocacy groups' or facilitate the functioning of existing transnational networks.⁸⁹ In the past trade agreements have led to transnational collaboration between CSOs of for ex-

⁸⁶ Commission on Legal Empowerment of the Poor, 'Towards a Global Social Contract: Labour Rights for Legal Empowerment of The Poor', in Commission on Legal Empowerment of the Poor & UNDP (eds.), *Making the Law Work for Everyone: Working Group Reports* (Vol. 2), (New York 2008); C. Ernst et al., 'Decent work and empowerment for pro-poor growth', Organisation for Economic Cooperation and Development (OECD) (2012), available at <<http://www.oecd.org/dac/povertyreduction/50157792.pdf>>.

⁸⁷ L. Van den Putte, 'What social face of the new European Union trade agreements?', transcripts event 23 June 2015, Brussels.

⁸⁸ M. Tempest, 'Rights abuses revealed in EU free-trade candidate Malaysia', *Euractiv*, 29 October 2015, available at <<http://www.euractiv.com/sections/global-europe/rights-abuses-revealed-eu-free-trade-candidate-malaysia-318965>>.

⁸⁹ M.E. Keck and K. Sikkink, 'Transnational advocacy networks in international and regional politics', 51 *International Social Science Journal* 2002, 89-101.

ample the US and Mexico.⁹⁰ For now the CSMs have not resulted in a significant increase of cooperation between CSOs from the EU and trade partner countries. However, it seems that the initiative for the letter sent by RedGe in 2015 originated from a European organisation taking part in the EU DAG for the Peru-Colombia agreement.^{91,92} In addition, labour groups from the EU and Korea loosely coordinate before a CSM takes place.⁹³

Policy Influence: Advising the Governments

Fourth, by providing relevant information (purpose 2) and/or engaging in a deliberative debate (purpose 3), CSMs can also lead to tailor-made joint recommendations on how the EU and its trade partner should implement the trade agreement in a sustainable way. Whereas this purpose builds on the previous ones, it distinguishes itself by its explicit ambition to formulate policy advice.

According to this view the CSMs serve as advisory boards for the governments. They should come forward with concrete suggestions for the Parties as to how the implementation of labour and environmental provisions should be improved. The difference with the previous purpose of 'monitoring' lies in the positive role for civil society: the goal is not (only) to highlight shortcomings in the implementation of the agreement (purpose 2) and/or to engage in a deliberative dialogue on these issues (purpose 3) but also to come up with suggestions for improving this. The ultimate goal would be that such meetings provide the governments with a clear mandate to act with their support.

The EU-Central America AA for example sets out that:

'These groups shall be tasked with expressing views and making recommendations on trade-related aspects of sustainable development and advising the Parties on how to better achieve the objectives of this Title.' (Article 294.4)

The formulation varies among the agreements: while some, such as the Central American AA, spell out that the DAGs have a specific 'task' (EU-Central America, Korea, Ukraine, Georgia, Moldova and Vietnam), other agreements mention the groups 'may submit views and recommendations' (Peru-Colombia and CETA). Finally, some agreements include the formal possibility to submit these views and recommendations 'on their own initiative' (EU-Peru-Colombia, CETA, Moldova, Georgia, Singapore, Vietnam).

According to a union representative from the EU side coming forward with recommendations is the ultimate goal of such meetings:

⁹⁰ L. Compa, 'NAFTA's Labour Side Agreement and International Labour Solidarity', in P. Waterman and J. Wills (eds.), *Place, Space and the New Labour Internationalisms*. (Hoboken: Blackwell Publishers 2001).

⁹¹ Author's interview with Peruvian NGO, e-mail, 8 April 2016.

⁹² See author's interview, *supra* note 46.

⁹³ See author's interview, *supra* note 47.

'Moreover, the monitoring mechanism's mandate provides for specific recommendations and making policy interventions on particular matters.'⁹⁴

The Rules of Procedure of the EU-Korea Civil Society Forum (DAG-to-DAG meeting, Figure 1, no.2) set out:

'Within this area of competence, the Civil Society Forum may express its views in the form of opinions, reports or conclusions or through any other appropriate action.'

The EU-Korea Civil Society Forum already published concrete joint recommendations related to labour and environmental issues, for example the suggestion that Korean companies active in Bangladesh could join the Accord on Fire and Building Safety.^{95,96} We are not aware of any other specific recommendations put forward by transnational CSMs, which is probably related to their more recent establishment.

In addition, as mentioned in section I, in some cases the agreements foresee that the CSMs can provide advice when a dispute arises between the parties on labour or environmental issues (EU-Korea, Moldova, Georgia and Canada). Here too, it remains to be seen whether and to what extent (a) the CSMs effectively manage to produce policy recommendations, (b) what their quality is in terms of setting out general policy orientations and making specific suggestions for improvement, (c) to what extent they are (and should be) picked up by the governments.

Conclusion

This section has shown that at least four analytically distinct purposes can be identified from the agreements and the discourses of actors involved. These correspond to different roles that have been heard in the debate on the civil society meetings: whether they (should) constitute (respectively) a fig leaf, an alarm bell or watchdog, an empowerment device, or policy tool. In conclusion, three further observations should be mentioned.

First, these purposes are not mutually exclusive, and some actors expect the CSMs to fulfil several purposes. For example, EESC member E. Pichenot suggested during a workshop on civil society involvement in EU FTAs that

⁹⁴ Y. Altintzis, 'Civil Society Engagement and Linkages in EU Trade Policy', in T. Takács, A. Ott and A. Dimopoulos (eds.), *Linking trade and non-commercial interests: the EU as a global role model?* (Vol. 4), Centre for the Law of EU External Relations (CLEER) Working Paper 2013/4.

⁹⁵ While this can be regarded as a remarkable development, it should be noted that a European labour representative lamented that the original opinion of the EU DAG on labour issues in Korea was severely watered down by the Korean DAG members and many references to the ILO were taken out in the final conclusions.

Domestic Advisory Group under the EU-Korea FTA, 'Opinion on the fundamental rights at work in the Republic of Korea, identification of areas for action' (2013).

⁹⁶ EESC, 'Minutes of the meeting of the EU-Korea Civil Society Forum under the EU-Korea Free Trade Agreement', (Brussels, 2012); EESC, 'Civil Society Forum under the EU-Korea Free Trade Agreement: conclusions', (Brussels 2013); EESC, 'Conclusions of the Civil Society Forum under the EU-Korea Free Trade Agreement', (Brussels 2014); EESC, 'Conclusions of the Civil Society Forum under the EU-Korea Free Trade Agreement', (Brussels 2015).

'the key objective of these monitoring mechanisms, besides ensuring implementation, was to strengthen civil society in EU partner countries as well as to consolidate the support of public opinion of trade liberalization.'⁹⁷

Second, however, different actors usually do emphasize different purposes. From our preliminary observations, it seems that EU trade officials seem to put more emphasis on the instrumental and functional purposes, members of civil society seem more keen on the normative and policy advising potential of the CSMs. The question who wants what and why needs to be researched more systematically.

Third, what makes it even more complicated is that intended purposes can have unintended consequences. Whereas the CSMs may be originally set-up for the purpose of legitimising the FTAs and silencing civil society opposition, and perhaps also to provide the necessary input to the governments in terms of monitoring Parties' compliance with the sustainable development commitments, over time the meetings might start fostering the empowerment of previously marginalised actors and making civil society actors indispensable members of decision-making with governments. Indeed, following historical-institutionalist reasoning the establishment of an 'agent' in the form of CSMs may set off a process of institutionalised cooperation whereby eventually the agent ends up performing different tasks than the creators originally envisaged.⁹⁸ Moreover, agents might successfully manage to cross the boundaries of their mandate and acquire more power than was originally foreseen (agent 'shirking' or 'slippage' in principal-agent terminology). Different factors – such as changing political preferences, unexpected circumstances, both nationally and internationally, as well as ambiguities on the original mandate, and of course the skilfulness of actors involved – may cause the CSMs to become more ambitious.

Despite these complexities, our analytical distinction between the different purposes does make it possible to get a better view of how the CSMs can be evaluated, as will be explained in the next section.

III ASSESSMENT: HOW TO EVALUATE THEM?

So far we have refrained from evaluating certain purposes or features as 'superior' from a normative perspective. However, the question inevitably rises whether the CSMs have been successful. This section provides a framework for analysing the CSMs. Thus, we do not aim to make a definite assessment of the functioning of CSMs, let alone their tangible or intangible impact on sustainable development. One practical reason is that it would be too early for this. Another reason, however, is that we lack the evaluative tools for a thorough evaluation. Therefore, we mainly aim to provide an evaluative framework that goes beyond easy and unqualified judgments and that allows one to situate different assessments within wider debates. Throughout the elaboration of this framework, we

⁹⁷ See EESC, *supra* note 35.

⁹⁸ P. Pierson, 'The Path to European Integration. A Historical Institutionalist Analysis', 29 *Comparative Political Studies* 1996, 123-163.

do provide a number of tentative empirical illustrations from our research on the EU-Korea, EU-Peru-Colombia and EU-Central America agreements.

This evaluative framework is summarised in Figure 3. It builds on the previous sections: in order to evaluate the success (or failure) of the meetings, it is important not only to consider their different features but also to engage in a deeper assessment of which underlying purposes are more or less relevant. Ultimately, this links the assessment to more fundamental differences in perspectives on the role of civil society in the context of trade, democracy and development.

The framework is structured around two basic questions. First, should civil society be involved? Second, if the answer is positive, for which purpose should this be? Evaluations of the CSMs basically resolve on actors' perspectives on both questions, as we will show below.

Why not involving civil society?

Not everyone would agree that CSOs should be involved in the implementation of trade agreements. Even within Europe there are different views on the extent to which this should be the case. Third party governments tend to be even more cautious about granting civil society a role in reaching the sustainable development objectives of the trade agreement. This hesitance does not necessarily mean that sustainable objectives are considered unimportant; it can also relate to different views of civil society and democracy in the context of trade agreements. Specifically the inclination not to give civil society a role in the monitoring of sustainable development can flow from authoritarianism, developmentalism, representative democracy, and neoliberalism.

First, authoritarian governments are obviously hesitant to grant civil society members a role in the follow-up of a trade agreement and its SD chapter. This relates to the possibility that civil society organisations would hollow out the government's power. Civil society has long been recognized as a major feature of an 'embedded' democracy, or vice versa as a potential threat for authoritarian governments.⁹⁹ Interference from foreign states and organisations into domestic politics, is even more sensitive from this perspective. Of course, there are differences in the extent to which governments are more or less authoritarian or democratic, which then also reflects on the extent to which civil society organisations are being involved. Authoritarian governments might also be more willing to accept civil society involvement, if they have an impact on which members participate in the meetings, and if the influence of these meetings remains limited.

This perspective in terms of more or less authoritarian, can explain why some third country governments have negotiated less far-reaching provisions on civil society involvement in the trade agreement with the EU. For example, in the agreements with Singapore and Vietnam, 'civil society' is not even explicitly mentioned. Another issue that might be explained from this perspective is the

⁹⁹ W. Merkel, 'Embedded and defective democracies', 11 *Democratization* 2004, 33-58.

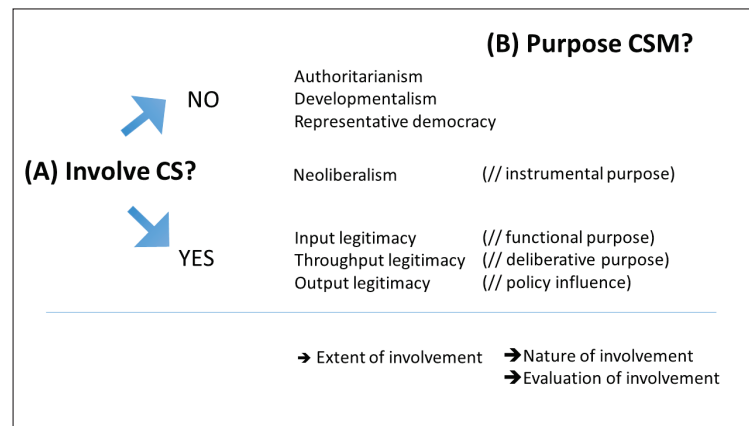


Figure 3 Evaluative framework (assessment)

attempts by some third party government to interfere in the selection process of the civil society members.

Second, it should be noticed that also liberal thinkers might support the thesis that authoritarian leadership is important in order to reach (sustainable) development objectives. According to developmentalism democratisation involving a more pluralistic civil society may emerge once a certain level of economic development has been reached. Therefore the elaboration and implementation of effective development strategies may require a strong government – even if in the short run this implies that democratic standards are being sacrificed. Developmentalist thinking tends to be widespread with some western donors, and not the least within the EU.¹⁰⁰ Participatory systems involving civil society may seem like a democratic improvement, but they also risk undermining the government's capacity to play a guiding role in the country's development. The point here is not primarily that civil society organisations undermine the government's power (authoritarianism) or that they are less legitimate representatives (representative democracy), but more specifically that extensive democratic structures would jeopardise effective development strategies.

This perspective in terms of developmentalist thinking, can explain why the promotion of civil society, and democratic governance in general, have not been on top of the agenda of DG Trade and DG Devco. The former typically focuses on trade interests and liberalisation, whereas the latter prioritizes economic development over democracy promotion (cf. developmentalism). Moreover, it is DG Trade that is responsible for the organisation and follow-up of the CSMs. DG

¹⁰⁰ T. Carothers, 'Democracy Assistance: Political vs. Developmental?', 20 *Journal of Democracy* 2009, 5-19.

K. Del Biondo and J. Orbie, 'The European Commission's implementation of budget support and the Governance Incentive Tranche in Ethiopia: democracy promoter or developmental donor?', 35 *Third World Quarterly* 2014, 411-427.

Devco has not been involved in the process, and coherence between EU development policy and the organisation of CSMs has often been lacking. Even though attempts are being made for DG Trade and DG Devco to speak the same language and to collaborate, so far both have been operating separately and barely coordinate their efforts.¹⁰¹ As such, the promotion of civil society through trade agreements seems to fall in between the cracks of the EU's compartmentalised institutional structure. Also in third countries such as Peru, we noticed a developmentalist perspective with the government and some business associations as a reason for sidelining social dialogue.

Third, the perspective of representative democracy also supports the non-involvement of civil society. According to this view, the elected representatives and their governments are the main actors within any democratic system. As such, members of parliament and government officials are considered the most legitimate political actors. They should be primarily responsible for the monitoring, implementation and evaluation of the agreements concluded between the Parties (including the SD chapter). Although the importance of civil society for democratic systems has long been recognized within democracy studies (going back to A. de Tocqueville), the traditional view on democracy continues to grant a primordial role to representatives that are elected by the people. Contrary to views of deliberative or participatory democracy, they tend to question the legitimacy of civil society organisations whose representatives are not elected by the people and pursue their own particularistic interests.

This criticism is even stronger when we move from the domestic realm into the transnational civil society. It may be argued that in international politics, states still constitute the most legitimate international actors, perhaps in addition to intergovernmental regimes and organisations that have been established by the states. The legitimacy of transnational CSOs, in contrast, has been questioned. Transnational NGOs have been criticised for being not representative and reflecting global disparities of influence.¹⁰² In addition it has been argued that they might overturn more legitimate political spaces.¹⁰³

This perspective may also explain third country governments' hesitance to involve CSOs, as they would question their representativeness. For example, the legitimacy of the trade union movement has been criticised by the Peruvian government and business, as it is small in terms of numbers and allegedly anchored in violent historical conflicts. Moreover, the same actors have frequently argued that some CSOs do not represent Peruvian interests but rather interests of the foreign states and NGOs that are funding them. From the EU side, however, concerns of representative democracy seem to be less present. Even if the general impact of the CSMs is limited, especially in the short run, the European Commission and its members have generally favoured the CSMs. The EP has even been a strong proponent of the CSMs.

¹⁰¹ See author's interview, *supra* note 30; Author's interview with EU official, 24 May 2016.

¹⁰² S. Khagram, et al., *Restructuring world politics: transnational social movements, networks, and norms*, (Minneapolis: University of Minnesota Press 2002).

¹⁰³ R. Price, 'Transnational civil society and advocacy in world politics', 55 *World Politics* 2003, 579-606.

Fourth, neoliberal economic thinkers may be even more explicitly opposed. This partly relates to the general view of a 'minimal state' in which the institutionalised power of lobby groups should be avoided. Trade unions, for example, typically tend to favour a more interventionist state. The neoliberal perspective emphasises the role of individuals instead of collective organisations. Specifically related to trade policy, the reluctance to involve civil society stems from the assumption that free trade should be minimally distorted by so-called 'non-trade' issues. This strand of thinking does not necessarily dismiss the importance of sustainable development. However, it follows the 'trickle down' theory in that this objective can be better reached through free trade. When free trade in accordance with comparative advantages leads to economic growth, democratic and human rights standards will equally start to improve. Even if it might be interesting to strengthen civil society for the purpose of sustainable development, possibly through development cooperation, it would be dangerous to organise this within the context of a trade agreement. The underlying fear is that this would open the door for protectionist misuses or – to put it even stronger – that the moral face of fair trade or sustainable development would be used as a justification to restrict trade.¹⁰⁴

Neoliberal orthodoxy may explain why some actors favour a 'soft' approach to the SD chapter (which provides no sanctions) without a strong role for civil society (which has no direct impact on trade flows). This may be the case for some third country governments, some business actors, and the European Commission. The idea that sustainable development provisions occupy an awkward position in EU trade agreements remains strong within the European Commission's DG Trade as well as in the trade sections of some EU Delegations. In this regard in the EU Delegation in Peru it was mentioned that the chapter on sustainable development is peculiar in light of the trade agreement as a whole as it is not really dealing with trade issues. While each chapter of a trade agreement has the general intention to expand trade and investment, this chapter has an inverted objective and goes the other way.¹⁰⁵ In a follow-up interview it was emphasised that 'it's a trade agreement'.¹⁰⁶

In conclusion of this part, three final remarks should be made. First, overlaps between these perspectives are thinkable. For instance, authoritarianism and neoliberalism can go hand in hand. Also developmentalist thinking can be compatible to neoliberal development strategies and/or to favouring authoritarian policies. In turn, neoliberalism and representative democracy could have a narrow view on what constitutes 'democracy' in common. However, these are still analytically distinctive approaches to thinking about the role of civil society, democracy and development in the context of international trade.

Second, this is not an exhaustive overview. More perspectives could be considered, such as a perspective based on national sovereignty concerns and/or national policy space. Both perspective would be hesitant towards FTAs, but whether or not civil society involvement is favoured would depend on the ap-

¹⁰⁴ J. Bhagwati, 'Trade Liberalisation and "Fair Trade" Demands: Addressing the Environmental and Labour Standards Issues', 18 *The World Economy* 1995, 745-759.

¹⁰⁵ Author's interview with EU delegation in Peru, Lima, 11 March 2015.

¹⁰⁶ Author's interview with EU delegation in Peru, Lima, 29 February 2016.

proach to the insider-outsider dilemma as explained in the previous section. CSMs can be seen as a way to legitimise the broader free trade principles that constrain national sovereignty and/or policy space, but they could also be seen as an opportunity to minimise negative effects and even act for improvement.

Third, these perspectives do not necessarily favour a complete rejection of CSMs. A limited involvement through soft mechanisms with much room of manoeuvre for the governments may still be accepted, as long as it is seen to guarantee the support for the overriding objective of having an FTA with the EU. This would be most clearly the case for the neoliberal, and to a lesser extent for the authoritarian perspective. From these perspectives, CSMs are evaluated positively on condition that (a) the FTA gets approved, (b) opposition to the agreement has effectively been dampened, and (c) civil society is being co-opted and silenced through this process. This makes it clear that the evaluation of the success of CSMs, is closely linked to the different purposes – in this case the instrumental purpose. This will be further elaborated below.

Why involving civil society – and for what?

Those who do favour the CSMs as part of the trade agreements' SD chapters also do so for diverging reasons. Based on the analysis above, we can assume that perspectives favouring civil society involvement will hold a broader conception of democracy (e.g., embedded liberalism or participatory governance), in which democratic principles are not subordinated to economic or developmental concerns, and in which the neoliberal doctrine is not dominant. Still, when we zoom into the arguments in favour of CSMs, there is considerable diversity. We can discern three different perspectives that closely relate to the above-mentioned purposes, namely input, throughput and output democracy.

If the main purpose is to collect information and monitor the sustainable development commitments, the CSMs should first and foremost gather the necessary data on the implementation of the relevant conventions. In order to be able to do this, it is important that the meetings can draw on of the existing expertise in various sectors related to sustainable development. These could range from human and labour rights to environmental issues, consumer affairs, and animal welfare. The organisations involved should be representative for the various objectives that are pursued in the SD chapter. It is thus important that relevant organisations are not excluded (i.e., a broad substantial diversity, see *supra*).

This corresponds to what has been called 'input democracy', whereby democratic legitimacy hinges on the extent to which the actors have been involved in the decision-making process. Although the concept of input democracy originally applied to the political involvement of the public in the context of national democracies (through elections or referenda), it could also be used in this context of CSMs. Indeed, the successful follow-up of the SD chapter may depend on the amount of input that is given during and can be collected from the meetings. Without sufficient and reliable input from CSOs, the meetings cannot be successful. Specifically, CSMs would fail if only a limited number of participants are effectively involved. Limited involvement could be the result of a biased selection procedure (see *supra*) or simply because of a lack of information.

In this regard, the limited transparency of selection procedures for DAG members may be problematic. A prerequisite for input democracy is of course that CSOs are aware of the possibility to participate in these meetings. For example, a Honduran national trade unionist representative explained that she was not aware of the existence of these meetings. She stated that her organisation depends on the regional meetings of their umbrella association to be informed on such high-level activities.¹⁰⁷ In Peru and Colombia CSOs are largely unaware of the fact that already existing mechanisms have been selected by the governments to serve as the domestic monitoring mechanism for the EU SD chapter. Apart from that, interviewees in these countries often complained they were not timely informed about when the transnational CSM would take place.¹⁰⁸ In addition, the EU's ability and/or willingness to be involved in the composition of its trading partners' DAGs also seems limited (see section I). On the side of the EU DAG, the President of the EESC recently lamented that the groups that do participate in the CSMs are not necessarily representing European economic, social or employment interests and are rather purely sectoral, national or even international.^{109,110}

However, this may collide with the purpose of democratic governance, which some consider more important than the collection of relevant data. According to this perspective, CSMs will be successful if they allow for a democratic dialogue between CSOs and for the empowerment of previously marginalised actors. This corresponds to what has been called 'throughput democracy', according to which institutions are legitimate if their decisions are well-informed and follow the logic of argument rather than bargaining.¹¹¹

According to this perspective, the CSMs should make it possible for the participants to engage in an open debate that is based not on power dynamics but on critical and rational arguments. Although the Habermasian ideal type will never be reached, the meetings might create more favourable conditions for deliberation than the alternative (domestic or international) venues that are available. Thus, evaluations will depend on the extent to which such a culture of dialogue has indeed been created and eventually on the extent to which this facilitates the empowerment of marginalised actors. Although a relevant number of organisations should be involved (cf. input democracy), what is of utmost importance is that the conditions for deliberative dialogue are present. For example, members of the meetings should have the opportunity to become famil-

¹⁰⁷ Author's interview with Honduran labour representative, Brussels, 10 November 2015.

¹⁰⁸ Author's interview with Peruvian labour representative, Lima, 6 March 2015; author's interview with Peruvian farmers' organisation, Lima, 6 March 2015.

¹⁰⁹ President of the EESC, 'Assessment of and recommendations for the composition, remit and workings of European civil society DAGs under the free trade agreements concluded by the EU' (Brussels 2015).

¹¹⁰ Some trade unions on both the EU and third country sides have complained that they are more representative than NGOs. See author's interview, *supra* note 108; See Author's interview, *supra* note 47.

¹¹¹ T. Risse, 'Global Governance and Communicative Action', 39 *Government and Opposition* 2004, 288-313; V. Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"', 61 *Political Studies* 2013, 2-22; M. Zürn, 'Democratic governance beyond the nation-state. The EU and other international institutions', 6 *European Journal of International Relations* 2000, 183-221.

iar with each other's arguments. This relates to the question of fixed versus variable participation (see *supra*) and to the frequency of the meetings (see *supra*). CSM participants have explicitly stated that they should be able to be in contact more regularly, for instance by email or videoconference.¹¹² In most cases this has not been achieved (see *supra*). For now it seems that many of the current CSMs are a forum for the exchange of information rather than a venue for true deliberation on substantial issues. Apart from that, the most recent CSMs mostly deal with procedural issues and do not yet arrive at substantive discussions on labour and environmental issues in the EU and third countries.

However, much depends on the domestic context. In some instances, certain actors would be better excluded and/or involved in separate meetings. For example, Colombian civil society representatives mentioned that they would prefer meetings without presence of the authorities so that they can speak out freely.¹¹³ In some cases it was mentioned that no real communication took place between civil society and the governmental actors. This was for example the case in the first EU-Central America civil society meeting in Nicaragua in 2014. The officials just read their statements and then left the room. When there is a domestic context of social dialogue between employers, trade unions, governments and other stakeholders, it would of course be preferable to organise joint meetings. However, this is very often not the case. Also, when labour and environmental groups with different backgrounds and interests are suddenly supposed to co-operate in the context of the SD chapter, it will be difficult to achieve a good context for deliberation. Participants need to get acquainted with each other so that a common purpose can be created. While socialisation may not be feasible and even not desirable, a common sense of the main objectives would be important.

Then again some may emphasise that the successfulness of the CSMs can only be measured in relation to what they effectively produce in terms of policy recommendations. This concerns both the quality of the policy recommendations that are advanced by the CSMs and the extent to which the Parties to the agreement take them into account. The former depends on the clarity of the recommendations, on how consistent they are in terms of argumentation, and on how detailed they are. The higher the substantial and geographical diversity (see features *supra*), the more difficult it will be to make recommendations.¹¹⁴ Especially in the case of open meetings where many CSOs are present, it has been difficult to convey clear messages. The latter concerns issues of accountability, namely the responsiveness of the government(s) towards the outcomes of the

¹¹² EESC, 'Draft Minutes of the second joint meeting of the representatives of the EU and Central American Advisory Groups under the Trade and Sustainable Development Title of the EU-Central America Association Agreement' (Brussels, 28 May 2015); See author's interview, *supra* note 15.

¹¹³ N. Brando et al., 'Assessing the impact of EU trade and development policies on human rights', Fostering Human Rights among European Policies (FRAME) Work Package No. 9 – Deliverable No. 2 (2015), at 149, available at <<http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-9.2-Submitted-30-June-2015.pdf>>.

¹¹⁴ A. Dür and D. De Bièvre, 'Inclusion without Influence? NGOs in European Trade Policy', 27 *Journal of Public Policy* 2007, 79-101; S. Hix and B. Hoyland, *The political system of the European Union* (Basingstoke: Palgrave Macmillan 2011).

mechanism. Different degrees of responsiveness are possible and can be put on a continuum, as explained in section I.

This is perhaps the most commonly used (albeit often implicit) benchmark: what do the meetings actually achieve, and do the governments take them seriously? Theoretically, it refers to the concept of 'output democracy', according to which democratic legitimacy is determined not so much by the involvement of relevant actors (input) or by the democratic quality of the decision-making process (throughput), but primarily by what is achieved in terms of tangible outcomes. In other words, exploring the contribution of civil society organisations to effective (political) problem-solving.¹¹⁵ This classification in input, output and throughput democracy also makes it clear that tensions between them may occur – something that will be elaborated in the next section.

Conclusion

The question whether CSMs are successful is difficult to answer, not only because we do not have much empirical information on this new phenomenon, but most of all because it depends on which perspective one takes in the evaluative framework (Figure 3). On the one hand, limited CSMs can be considered a success from an authoritarian, developmentalist, representative democracy or neo-liberal perspective. On the other hand, perspectives that provide a role for civil society in fostering input, output or throughput democracy will favour more civil society involvement. However, the latter will not automatically evaluate each form of civil society involvement positively. Their evaluation will depend on the nature of involvement, namely whether it fits with the functional, deliberative, or policy tool purpose. Depending on the purpose one envisages, the evaluation of a certain CSM will be more or less positive or negative.

This distinction is important, because tensions between different purposes may occur – most clearly between input and output –, thereby determining evaluations of civil society involvement.¹¹⁶ For example, while it may be necessary to involve various CSOs from an 'input' perspective, this makes it difficult to draw clear and consistent policy recommendations. The recent open meeting of EU and Central-American civil society in Brussels (May 2015), for example, had a wide range of participating organisations ranging from indigenous Central American organisations over a Turkish business association to Heineken. While most discussions were related to how such meetings should function, substantial issues were discussed to a limited extent only. One proposal was therefore to organise more thematic meetings to discuss some topics more profoundly. During the meeting with the governmental representatives the latter stressed they need more specific input to set up concrete projects. A member of the EU DAG confirmed he prefers to meet in a closed meeting with less participants because the discussions are better. Limiting the numbers of interests and participants would however affect the level of pursued input democracy.

¹¹⁵ B. Finke, 'Civil society participation in EU governance', 2 *Living Reviews in European Governance* 2007, available at <<http://www.livingreviews.org/lreg-2007-2>>.

¹¹⁶ See B. Finke, *supra* note 115.

Also, tensions between throughput and output democracy can arise. On the one hand, bringing together civil society actors from various backgrounds (including business, in the EU's definition) might hinder the deliberative quality of discussions and the opportunities for empowerment. Separate meetings of labour representatives within and/or between the EU and third countries may be facilitating in this regard; however, the inclusion of environmental groups and business associations under the broad banner of 'sustainable development' could hinder deliberation and empowerment, especially if power asymmetries come to emerge. A member of the EU DAG of the Central American AA deplored that some actors are more vocal and imposing their will on the other DAG members when composing their joint recommendations, creating frustration in the group.¹¹⁷ On the other hand, from a deliberative perspective it might be a good idea to get organisations that do not meet each other in other platforms to sit together at one table to discuss trade and sustainable development. Representatives can get to know each other and get to understand the position of the other actors. We do not have information on the actual moderation of the meetings, and whether open communication whereby each participant can express its opinion without monopolising the meeting or being attacked by others (in theoretical terms: whether the conditions for Habermasian deliberation are fulfilled). What seems clear, however, is that this has not been established in the first meetings of the CSMs and that it will take much longer to establish the necessary conditions for deliberation.

Conflicting views on throughput versus output democracy become clear in evaluations of the meetings of the EU DAG and the Korea DAG. In the view of the EU DAG, these led to a watering down of joint recommendations on labour issues in Korea. However, from a deliberative perspective, the fact that unions, businesses and environmental organisations discuss labour issues together, might be regarded as a success. Again, much depends on whether, in the coming years, the conditions for a deliberative dialogue can be established.

CONCLUSIONS: WINDOW DRESSING OR WINDOW OF OPPORTUNITY?

We have addressed three basic questions: how are CSMs in the context of EU trade agreements organised (features), what are they for (purposes), and how can we evaluate them (assessment). In doing so, we have taken stock of current developments (empirical contribution) and proposed frameworks for further examination (analytical contribution, see Figures 1 and 3). While it is too early to make a systematic and comparative analysis of the CSMs, some of which have only convened a few times at the time of writing, we have made a first attempt to understand them.

It has indeed become clear that evaluating the success of CSMs is harder than might be thought at first sight. One might easily dismiss them as being irrelevant 'talking shops'. Or one could herald them as innovative mechanisms with the potential to further democratic governance and empowerment. One might also observe that the meetings have been useful 'fig leaves' because they

¹¹⁷ See author's interview, *supra* note 26.

have secured the trade agreements. Alternatively, one may appreciate their relevance as a sort of 'study group', 'alarm bell' or 'watchdog', namely the extent to which shortcomings in compliance with sustainable development standards are brought to the attention.

When evaluating the meetings, it is important to consider organisational issues. As section I demonstrated, there are a number of shortcomings in the early stages of the organisation of the CSMs, and also the accountability mechanisms could be improved. In light of the increasing amount of EU trade agreements and the accompanying CSMs, one can also wonder whether the EU (and its CSOs) can keep up with the practice of establishing one specific DAG for each agreement. Especially for European labour representatives it seems that not enough resources are available to take up many more responsibilities in this regard. This problem seems less severe for other NGOs as there are many of them. One idea that could be explored is to bundle the EU DAGs in one or more mechanisms, for example depending on the geographical area. The US NAC (National Advisory Committee for Labour Provisions of US Free Trade Agreements) could provide some inspiration in this regard. While resources would be used in a more focused way, one can wonder whether labour and environmental problems in 'less problematic' countries would get sufficient attention.

However, we have also shown that evaluations of the meetings should go beyond practical issues. Fundamentally, much depends on one's view on democracy and civil society in the context of international trade. On the one hand, we identified different perspectives – authoritarianism, developmentalism, representative democracy, and neoliberalism – for which limited CSMs equals success. On the other hand, there are different perspectives that positively assess elaborate civil society involvement, although this depends on the nature of involvement. According to the view on 'output democracy' the tangible outcomes are more important than the involvement of relevant actors ('input democracy') or the democratic quality of the meetings ('throughput democracy'). There may also be inherent tensions between these different views, as we have illustrated.

Moreover, the domestic context in which these CSMs take place should be taken into account. First, the variation of features in the different agreements may be explained by different domestic factors within the third country. Second, evaluations should also take the domestic context into consideration. In some countries, where unions do not often sit together with government officials (as is the case in Korea), the mere fact that they provide a platform for interaction can be seen as positive. It also became clear that, depending on the domestic context, the presence of government officials in the meetings has been evaluated differently. Third, it would be important to know more about the background and preferences of the civil society organisations that are involved, about their expectations vis-à-vis the EU and their legitimacy in the domestic context.

Importantly, CSMs are not static events. Evolutions take place from agreement to agreement, as well as within the framework of one agreement. Also the European Commission argues that the meetings are still in an experimental phase and that their functioning could be modified and improved. The design and evolution of the CSMs does indeed resemble to what academics have called 'ex-

perimentalist governance' in EU external relations.¹¹⁸ For example, the Korean DAG was not seen as representative of civil society. The European DAG and the Commission realised that an open meeting is also needed to make sure that relevant organisations can participate. Therefore the European Commission thereafter (in the negotiations with Central America and Peru-Colombia) proposed a more open meeting instead of fixed meetings between the different DAGs. The CSMs which take place in the context of the EU-Central America agreement also illustrate this experimental approach, for example through the gradual and challenging formation of the different DAGs and exploration of possibilities to increase the number of participants, such as the use of videoconference. Thus, these mechanisms need some time to develop.

Therefore, it would be extremely premature to argue that the civil society meetings in EU trade agreements are only relevant in terms of legitimising free trade. It seems tempting to conclude that the instrumental purpose has been dominant, given the limited visible output of the CSMs so far, the problems concerning budgetary and organisational support, the incomplete accountability mechanisms, the problems with the composition of the domestic groups in third countries, as well as the overriding economic objectives behind the EU's trade agenda. According to our evaluative framework, this would imply that neoliberal and perhaps authoritarian perspectives can claim success.

However, it may be too early to tell. In an experimentalist fashion, the CSMs seem to be gradually evolving towards more substantial discussions. Ambiguities on the purposes also provide opportunities for civil society actors to mould the meetings to their advantage. The European Commission does not strongly interfere in the composition of the meetings and there is scope for discussions on various concerns voiced by civil society organisations – even on issues that are only indirectly related to trade. Whether the meetings will eventually go beyond the instrumental purpose as it was perhaps originally designed by the Parties depends on how the EU, its trading partners, the CSOs involved and the wider public make use of the new mechanisms in the coming years.

¹¹⁸ J. Zeitlin (ed.), *Extending Experimentalist Governance?: The European Union and Transnational Regulation* (Oxford: Oxford University Press 2015).

Civil society meetings in EU trade agreements

Recommendations and lessons for EPAs

Deborah Martens, Jan Orbie, Lore Van den Putte and Yentyl Williams¹

Key messages

EU trade agreements increasingly involve civil society to discuss and monitor sustainable development.

Evaluations of these civil society meetings vary widely from being mere talking shops to empowering platforms.

The new EPAs have weak or no provisions on civil society involvement and should be strengthened in this regard.

In order to maximise the full potential of these meetings, lessons can be drawn from the existing mechanisms.

Introduction

The conclusion, signing and ratification process of three new Economic Partnership Agreements (EPAs) between the European Union (EU) and the Southern African Development Community (SADC), the Eastern African Community (EAC) and the Economic Community of West Africa States (ECOWAS), has reopened the debate on EPAs, including in the European Parliament.

Within the EU, it has increasingly been recognised that civil society should be involved in the discussion and monitoring of trade agreements, in particular when it comes to the sustainable development dimension. However, civil society provisions in the EPAs differ significantly from those in other recent trade agreements concluded by the EU, and in the case of the EU-SADC EPA they are non-existent. This is surprising since the EU-CARIFORUM EPA does have experience with civil society meetings and civil society organisations (CSOs) have strongly contested the African EPAs.

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This raises the important question of whether and how civil society could be involved more in the new African EPAs?

This Briefing Note addresses this question by (1) providing a background on civil society meetings in recent EU trade agreements, (2) exploring the relevant content of the three African EPAs that are tabled for ratification, and (3) putting forward ten recommendations based on experiences with existing agreements.

Civil society meetings in EU trade agreements²

Since the EU-Korea trade agreement, the first new generation agreement that the EU has negotiated since the 'Global Europe' strategy³, dedicated chapters on trade and sustainable development have become a standard feature of EU trade agreements. These include references to labour and environmental standards that should be respected in the framework of the agreement as a whole. They also establish civil society meetings which grant an, apparently, important role to CSOs in the follow up and monitoring of these sustainable development commitments. These meetings are part of the EU's cooperative approach that shies away from sanctions and instead emphasises cooperation and dialogue.⁴

Even though there is some variation in the legal texts establishing these meetings, there are three recurrent features:

- They refer to **domestic civil society meetings** in which representatives of three constituencies (labour, environment and business) of each Party (both within the EU and within its trading partner(s)) participate. This is often called the Domestic Advisory Group (DAG).
- They also establish a **transnational civil society meeting** where the members of the domestic meetings and/or other actors of both the EU and its trading partner(s) meet annually.
- They foresee some **interaction** between these two meetings and the **intergovernmental body** (between the EU and its trading partner(s), the so-called Parties) that meets annually in relation to the implementation of the sustainable development chapter.

The EU-CARIFORUM EPA with the Caribbean group was the first concluded EPA, implementing the trade commitments of the 2000 Cotonou Agreement and was negotiated between 2004 and 2007. This EPA also includes commitments on labour and environmental standards and establishes a transnational civil society meeting, called the Consultative Committee. There are three relevant differences with the subsequent agreements. However, the differences could also be put into perspective:

- First, the EU-CARIFORUM EPA does not legally foresee a domestic meeting. Nonetheless, in practice Caribbean and EU representatives have met separately in preparation of the transnational meeting.
- Second, the EU-CARIFORUM EPA does not have a separate chapter on sustainable development. In practice, however, discussions in the transnational meeting do largely concern sustainable development issues.
- Third, the organisational provisions in the EU-CARIFORUM EPA are less elaborated than those in the new generation trade agreements. For instance, there are no provisions setting out when the first meeting should take place, the frequency of these meetings and whether they depend on the governments to be convened. In practice, however, Rules of Procedure have been elaborated for the transnational meeting.

Currently, civil society meetings have been set up in the framework of the EU trade agreements with Korea, Peru-Colombia, Central America, Moldova, Georgia, and the CARIFORUM. In the near future such meetings will also be created for the agreements with Ukraine and Vietnam. The civil society meetings are thus proliferating rapidly. They increasingly require resources from CSOs, the European Commission and third country governments. However, despite their growing prominence, there is **much confusion on the exact purposes** served by these meetings. At least four distinct purposes can be identified:

² The insights provided hereafter draw from previous research at CEUS, based on participant observation and more than 55 interviews with participants of such meetings (mainly in the EU and in Colombia, Costa Rica, Honduras and Peru). See Orbie & Van den Putte (2016) and Orbie, Martens & Van den Putte (2016).

³ See European Commission, 2006.

⁴ See Campling *et al.* (2014), International Institute for Labour Studies (2016), Oehri (2015), Postnikov & Bastiaens (2014).

- **instrumental:** gathering support for the trade agreement by giving the agreement a 'human' face;
- **functional:** monitoring the chapter on sustainable development, gathering information on its implementation, and signalling possible defaults;
- **deliberative:** providing a forum for dialogue and deliberation thereby contributing to democratic governance and empowerment of CSOs;
- **policy:** advising governments and stakeholders on how the EU and its trade partner should approach sustainable development issues by providing tailor-made recommendations on labour and environmental issues.

This poses a **paradox**: while the civil society meetings are an increasingly significant part of the EU's cooperative approach, there is much ambiguity about their purposes and much uncertainty about their effective functioning. This is reflected in the widely diverging evaluations of the meetings – ranging from 'talking shops' to 'empowering' marginalised groups.⁵ In any case, it is obviously important that the meetings go beyond the 'instrumental' purpose and are not merely a 'talking shop'. This is already challenging for the meetings that are currently being organised under the existing agreements. For the African EPAs, it will be even more difficult given that civil society meetings are less elaborated in these agreements – as will be outlined below.

Maximising the potential of civil society in EPAs

The EU-EAC and the EU-ECOWAS EPA contain provisions similar to the EU-CARIFORUM EPA. Both of these African EPAs establish a transnational meeting (also called Consultative Committee). Provisions on the scope and composition of these meetings are quasi-identical to the EU-CARIFORUM EPA. Hence, compared to the 'new generation' of EU trade agreements, there are no provisions for domestic meeting, the scope is broader than 'sustainable development'⁶, and there is no obligation regarding the frequency of the meetings.

Whereas the EU-SADC EPA contains a dedicated chapter on trade and sustainable development, similar to the respective chapters in the 'Global Europe' agreements discussed above, this agreement does not refer to any civil society involvement whatsoever. The agreement with the Southern African states only contains an article⁷ referring to monitoring through the 'respective participative processes and institutions' of the Parties (Article 4). The absence of civil society involvement in this EPA has also been an issue of concern for the European Parliament.⁸

Thus, the EU-SADC EPA is clearly less ambitious than the other EPAs when it comes to civil society involvement. In turn, the role of civil society in the EU-ECOWAS and EU-EAC EPAs, as in the EU-CARIFORUM EPA, is more limited than in the new generation agreements. The legal differences should be put into perspective, as mentioned in the previous section. However, the absence of a formal domestic meeting, that is legally required to meet on a regular basis, makes the EU-CARIFORUM, EU-ECOWAS and EU-EAC agreements less far-reaching than the recent 'Global Europe' agreements. Legally required domestic meetings, in addition to transnational meetings enhance the opportunities for continuity, elaborate monitoring and discussion of sustainable development issues, because they would more strongly institutionalise the civil society involvement. They can also provide input to the transnational meeting, involve local stakeholders that are not willing or able to be attend the international meetings, and last but not least, they enhance the possibilities for strengthening democratic governance at the local and national level.

⁵ See Ulmer, 2013 and Orbie, Martens and Van den Putte, 2016.

⁶ While the EU-CARIFORUM and EU-ECOWAS EPAs specify that the meetings encompass 'all economic, social and environmental aspects' that 'arise in the context of the implementation of this Agreement.' (Article 232.1 EU-CARIFORUM; Article 97.1 EU-ECOWAS), the EU-EAC EPA states that it encompasses 'all matters covered under this Agreement as they arise in the context of the implementation this Agreement' (Article 108.1).

⁷ A similar provision on 'monitoring' through domestic institutions is included in the EU-CARIFORUM EPA (not in the EU-AEC or EU-ECOWAS EPA).

⁸ See European Parliament, 2016 and oral question by Bernd Lange, Alexander Graf Lambsdorff, on behalf of the INTA Committee, 2016.

The more limited institutionalisation of civil society meetings, and particularly the absence of such meetings in the EU-SADC EPA, is surprising for a number of reasons. First, the involvement of civil society is a commitment enshrined in the overarching Cotonou Agreement between the EU and the African, Caribbean and Pacific (ACP) group. Since the EPAs are arguably one of the most important elements of the Cotonou Agreement, it is surprising that a separate civil society mechanism is not established in the case of the EU-SADC EPA or is not more elaborated and dedicated to the issue of sustainable development in the case of the EU-EAC and EU-ECOWAS EPA. Second, the EPAs have been heavily contested by CSOs in the North and the South, and the mobilisation against an EU trade agreement with Canada and the United States suggests that this politicisation of EU trade agreements is not going to decrease. Therefore, again, one would expect the level of ambition on civil society to be high in the new EPAs, or at least equivalent to other recently negotiated trade agreements, thus establishing domestic and transnational meetings on sustainable development.

However, this should not prevent domestic and transnational civil society meetings to take place on issues related to sustainable development in the context of the African EPAs. Given the far-reaching impact of trade liberalisation for sustainable development⁹, it would be desirable to maximise the potential of civil society involvement. In this regard, several alternative approaches could be envisaged.

Concerning the EU-SADC EPA:

- **A protocol could be added to the agreement** during the consent phase. Such protocols would reiterate the importance of civil society meetings to the respective agreements and spell out how these should be established to ensure a smooth functioning. A light version of this approach would be to agree on a Roadmap with commitments on civil society involvement, similar to the Roadmap that was agreed for the ratification of the EU-Peru-Colombia agreement at the insistence of the European Parliament. This Roadmap would have to include specific guidelines on the functioning of these meetings.
- **Informal civil society meetings on the sustainable development provisions of the EPAs** could still be organised. For this purpose, the ACP Civil Society Forum, which was established in 2001 and is not very active, together with the informal meetings of civil society in the context of the ACP-EU Joint Parliamentary Assembly meetings, could be used as building blocks.¹⁰ Again, the success of this option hinges on a strong political commitment from the Parties, not least the EU institutions. By setting up such meetings at its own initiative, the EU would initiate a practice that could eventually be formalised.
- Include civil society meetings in the legal text through the use of the **revision clause** five years after the EPA entered into force (see below).

Concerning the EU-EAC and EU-ECOWAS EPAs:

- **Optimal use can be made of the existing provisions on civil society** currently included in these two agreements. This requires a strong commitment from the EU, or ideally all the Parties, to make all necessary efforts to facilitate meaningful civil society meetings. Again, **informal meetings** on both sides could compensate for the absence of formal domestic civil society meetings. In addition, ambitious and clear **'Rules of Procedure'** could be negotiated between the members of the meetings. Experience with the EU-Korea agreement for instance show that Rules of Procedure are indeed important for the practical functioning of the meetings. In this context, there should be guarantees that the broad scope of the transnational meeting (covering all the dimensions of the agreement, not only sustainable development) leaves specific opportunity for **focused discussion** on specific (and perhaps sensitive) issues such as labour rights violations. While the broad scope may offer opportunities for dialogue on various matters, there is also a danger that politically sensitive debates will be overshadowed because of an overcrowded agenda, especially if meetings only take place on an annual basis (see below, recommendation 1).
- As a last resort, the **rendez-vous clauses** in the EU-EAC and EU-ECOWAS EPAs leave the door open for discussions on sustainable development. These clauses are very brief¹¹ and it is unclear whether they intend to create more elaborated civil society meetings. Similarly, the EU-SADC and EU-ECOWAS EPA **revision clauses** and the EU-EAC EPA **review clause** could also provide scope

⁹ See for example Langan & Price, 2015.

¹⁰ For more information see ECDPM, 2013.

¹¹ The EU-ECOWAS EPA states that 'the Parties mutually undertake to enter into discussions concerning (...) sustainable development' (Article 3). The EU-EAC EPA states that 'The Parties undertake to conclude the negotiations in the subject matters listed below (...) Trade, environment and sustainable development' (Article 106.2).

for the inclusion of civil society at a later date (even though these clauses do not mention sustainable development or civil society involvement specifically).

The **civil society meetings would ideally be based on ambitious legal provisions**. However, lacking strong legal commitments in the EPAs, these practical alternatives could be considered as a second best option.

Specifically, for these meetings to materialise their full potential, the next section will outline ten recommendations.

Recommendations

Although the civil society meetings are still in an embryonic phase (several have met only two or three times), we can formulate a number of recommendations. Some relate to the legal design in the agreements, while others concern the implementation in practice. Finally, the last two recommendations discuss issues for further reflection on civil society meetings in general. The recommendations draw from research on the new generation agreements, but could also be relevant for the forthcoming African EPAs.

1. DISENTANGLE 'SUSTAINABLE DEVELOPMENT'

In order to give sufficient and appropriate attention to the three pillars of sustainable development - people, planet and profit - the agreement should allow for **the creation of sub-groups dedicated to these three topics**.

In the current agreements, labour, environmental and business issues are always holistically discussed in the same meeting. Sensitive issues, such as labour rights, can be easily overshadowed by less controversial issues, such as environmental issues, as in the context of EU-Korea, or business issues, as in the context of EU-Moldova. The wider the scope of topics that can be discussed at the table, the more **likely that sensitive but important issues are not seriously addressed**.

The establishment of separate meetings to deal with labour and environmental issues, as is foreseen in the EU-Canada trade agreement, could be considered. In June 2016 in Colombia, CSOs and government representatives agreed to create sub-groups (for, respectively, labour and environment) within the existing domestic meetings. Trade unions and an environmental organisation are currently tasked to elaborate proposals for the composition and working methods of those sub-groups. Another example is Costa Rica, which is the only Central American country that organises separate meetings. However, this example also illustrates that the separation of the three topics is not a guarantee for more focused and substantial discussions, as in practice business groups dominate the labour meetings and labour unions rarely participate. Holding separate meetings would nevertheless be part of a strategy to avoid the watering down of discussions and hence the 'talking shop' nature of the meetings. Another possibility would be to set up (in)formal sub groups where rapporteurs can be responsible for the communication on a very specific topic. For example, in the EU domestic mechanism for the EU-Korea agreement a civil society member from the International Trade Union Confederation was the rapporteur for an opinion on the status of labour rights in Korea.

2. FORESEE DETAILED ROLE, ESTABLISHMENT AND FUNCTIONING

The agreements should include key organisational elements concerning the **selection and membership of these meetings**.

Existing trade agreements contain several ambiguities and uncertainties on the role and functioning of these meetings, which has hindered their implementation. Because of this lack of clarity several civil society meetings have so far been limited to lengthy discussions on procedural issues, without touching on substantial debates on sustainable development. This has frustrated and discouraged a number of members about the relevance of the meetings. In this regard several questions have also been raised about the **selection and independence of civil society members** from the government. In most cases, the procedure for CSOs to participate to the meetings is neither clear nor transparent. In other cases the independence of members is not mentioned (e.g. EU-Peru-Colombia agreement) or not respected (e.g. Honduras in the EU-Central America agreement). In the case of Korea, one of the main union federations was originally not included in the domestic civil

society meeting, and the independence of several academic experts was doubtful. Disagreements on the selection of the Caribbean members in the EU-CARIFORUM Consultative Committee also contributed to the long delays in organising the first meeting.

The new EPAs contain the same flaws as existing agreements. These problems could be overcome if the legal and/or procedural texts would contain **provisions on the selection procedure, the institutional set-up and independent and balanced membership**. Of course these provisions should take into account the specific context of the trade partner at hand and should leave enough room for CSOs to implement the provisions in the most suitable way. For example, more detailed provisions in the initial EU-CARIFORUM EPA could have spared additional delay and provided greater clarity to establish the first Consultative Committee meeting.

3. INCREASE AWARENESS WITH CIVIL SOCIETY

There is a need for **better understanding by civil society of the trade agreement**, its sustainable development provisions, and the potential role of the civil society meetings in this regard.

In the EU's partner countries in particular, there is a lack of awareness and knowledge on these issues among CSOs. This not only concerns the labour and environmental organisations, but also small and medium enterprises (SMEs). In addition, the EU has often been hesitant to interfere in domestic politics of third countries by directly promoting the domestic civil society meetings. For example, Central American CSOs have very **little knowledge on the existence and potential opportunities of these meetings generating little interest** to participate. In Peru and Colombia several civil society representatives, including even participants of the transnational meeting, are not aware of the fact that there is a certain domestic mechanism to discuss the sustainable development aspects of the EU trade agreement. This fundamentally hinders the effective functioning of the domestic meetings and interaction with the transnational meetings. Indeed, this is no different from the case of CARIFORUM, where limited awareness delayed the organisation of the first meeting for several years. The European Economic and Social Committee (EESC), supported by the European Parliament, was the driving force behind raising awareness amongst CSOs in the CARIFORUM countries of the existence of the structure and the opportunities it created.

The EU, and in particular its Delegations, could **more proactively inform civil society in partner countries**. Inspiration could be drawn from the initiative of the EU Delegation in Colombia that organised a meeting with local CSOs on the trade agreement, the civil society meetings included in it and how its functioning could be improved. Such meetings could also be linked to the Roadmaps of the EU Delegations, which aim to set out specific ways in which to deal with local civil society (as is happening in Peru).

A novel way to increase awareness would also be to allow CSOs to observe negotiations *ex ante*, and not only *ex post*. In the case of the EU-EAC EPA, Kenyan civil society successfully took the government to court in order to gain access to the information of the negotiations, in line with the spirit of the Cotonou Agreement (Article 4).¹² Indeed, the heavily contested nature of international trade agreements, combined with the drive for increased transparency, should favour such a thrust to include civil society in both the *ex ante* and *ex post* oversight of trade agreements.

4. ENSURE INTERACTION WITH THE GOVERNMENTS

The governments should be **informed about the discussions** at the civil society meetings and **follow up on the questions and recommendations** that are expressed during these meetings. Without two-way communication and accountability of the respective governments, the civil society meetings lose its relevance, as CSOs do not see the benefit of investing resources in participation.

While the interaction between governments and CSOs is important, one should be cautious about the presence and active participation of governmental actors during the actual meetings. In the CARIFORUM Consultative Committee for example the participant from the government was quite vocal and dominant, and in turn, this seemed to hamper free and substantive discussions.

It is however possible to ensure government-civil society interaction without resorting to governmental presence. The EU-Canada agreement for example obliges the governments to annually report on how they have followed up the communications from the civil society meetings.

5. COORDINATION AMONG CSOs WITHIN THE REGION

CSOs within each region should coordinate among themselves **in order to increase their weight in terms of expertise and impact**.

¹² See In the case 'Kenya Small Scale Farmers Forum & 6 others v Republic of Kenya & 2 others' Petition No. 1174 of 2007, wherein the High Court of Kenya ruled in favour of the Petitioners in 2013.

Without coordination within the regions, the communication between the civil society of both regions risks being very slow and difficult. For instance, so far there is no coordination between the Central American domestic meetings that take place at national level to prepare for the transnational meeting or, in general, to communicate on the EU domestic meeting. During the civil society meetings in June 2016, the EU domestic meeting pointed out that this was the most crucial issue to overcome. As a result, the Central American domestic meetings will now endeavour to have a more coordinated collaboration. Also in the context of the EU-Peru-Colombia agreement, there has not been an exchange of views among Peruvian and Colombian civil society. This pitfall is especially relevant for the African EPAs, because they involve a high number of countries (which makes coordination more cumbersome). Moreover, the agreements do not foresee the establishment of domestic meetings where coordination could take place.

Despite the lack of provisions foreseeing a domestic meeting, in the context of the EU-CARIFORUM EPA, CARIFORUM civil society meets prior to the transnational EU-CARIFORUM civil society meeting to align their regional position beforehand. In general, such coordination could be facilitated by a **secretariat**, like the EESC for the EU domestic meetings, which centralises the communication efforts of the meetings. Alternatively, one person per country could be appointed as a contact person to manage the coordination.

6. Pursue CONTINUOUS FOLLOW-UP

The domestic and transnational meetings should be complemented by **other contact opportunities** for CSOs to follow up and advance the work of these meetings.

Most transnational meetings only take place once a year with little or no follow-up in between. This puts any substantive advancement and continuity at risk. This issue is related to the previous recommendation, where, in the case of Central America, the lack of coordination coincides with a lack of communication and follow-up leading to little or no progress on substantive issues. This has been discouraging for participating organisations.

Virtual communication tools (e.g. videoconferencing, web streaming, a communication portal, improved website) and concrete arrangements for communication (e.g. a secretariat and one contact person per domestic mechanism as mentioned in the previous recommendation) can help to address this issue. Such arrangements would enable the civil society meetings to be more dynamic and react more promptly to recent developments.

7. Foresee FUNDING

Funding is necessary to cover **travel expenses and other organisational costs** of the civil society meetings, as well as evidence-based **research**.

The European Commission covers travel expenses for a number of members of the domestic meetings in the EU, whereas partner countries rarely do so. This lack of resources has a serious negative impact on the attendance at these meetings. In the case of Central America, very few organisations, except for a small number of business representatives, are able to attend meetings in Brussels. Moreover, in the case of the EU-Peru-Colombia agreement, it has proven impossible for Peruvian civil society to attend the meetings when these took place in Colombia and *vice versa*. Difficulties for CSOs to attend meetings even within their own region (let alone to the EU meetings in Brussels) are obviously all the more relevant for the African regional EPAs. The limited activity of the ACP Civil Society Forum is also due to a lack funding and support from the ACP Secretariat. A more positive example can be found in the case of the EU-Korea agreement where the rules of procedure stipulate that the travel costs are to be covered by the respective government.

In addition, there is a lack of knowledge about the social, economic and environmental impact of (EU and other) trade agreements. While the civil society meetings can serve to highlight relevant issues to the Parties and monitor possible deficiencies, this should be complemented with independent research into the impact of the EU trade agreements. The EU could contribute to funding these studies and to disseminating their results to civil society. In this regard, we could also point to the role of the civil society-led observatories such as the 'Central American Regional Observatory of Free Trade Agreements and Corporate Responsibility' and the 'Observatory of the EU-Central American Association Agreement'. By means of case studies and newsletters these networks want to create more knowledge on the impact of the trade agreement.

In any case funding for these trade-related meetings should be **coherent with development policy**: by funding civil society in third countries (as envisaged in the EU's 'Agenda for Change') or dedicated development budgets to the civil society meetings. Within the European Commission, some bureaucratic obstacles between DG Trade and DG DEVCO should be addressed to make this possible. If EU funds would be considered too patronising towards the EU's partner country, a

common fund with the partner country could be created. This could be included in the legal text of future agreements or in the protocol that was suggested above.

8. **COORDINATE with other relevant actors**

Several EU and international actors are dealing with similar issues. It is therefore necessary to **align** with these actors, **share expertise and shape a coherent work agenda**.

So far, little or no communication between the different relevant actors exists. For example, there seems to be no discussion in the civil society meetings about the pending labour case under the US-Peru trade agreement. In this case, CSOs from Peru and the US have jointly complained to the US Department of Labour on the lack of freedom of association and the right to collective bargaining in the agricultural and textile sector in Peru. The same goes for the labour case in Honduras that was submitted under the US-Central America trade agreement. While these cases also apply to the EU trade agreements with these countries, this issue does not seem to be followed up on in the civil society meetings.

Relevant actors include international organisations (such as the International Labour Organisation), EU institutions (relevant units in several DGs - Trade, Development, Employment and Social Affairs, Environment - and the monitoring groups and delegations in the European Parliament) and EU Member States working on these topics through their embassies and development aid. In this regard the presence of a member of the Committee on International Trade in the European Parliament at the EU domestic meeting of the EU-Peru-Colombia agreement, can be seen as a positive sign. Another positive example concerns the presence of an ILO representative at the 2015 transnational meeting of the EU-Korea agreement.

Further reflection

9. **Consider the FEASIBILITY of a growing number of meetings**

New **ways of organising** the civil society meetings should be examined to anticipate the growing number of trade agreements and avoid an unmanageable patchwork of meetings.

If the current evolution of an increasing number of civil society meetings continues, one can seriously doubt whether CSOs, the European Commission, and the EESC can continue investing sufficient resources. For some European or international trade unionists, the situation already seems quite challenging.

Alternative ways of organising these meetings should be considered. One possibility would be to **cluster some meetings** of the several trade agreements, as many of the members (at least on the EU side) are part of several of them. In this regard, the EU could draw inspiration from the National Advisory Committee in the US where a fixed group of people monitors the implementation of the labour provisions of all US trade agreements. In addition to the vertical meetings organised for each trade agreement, horizontal **thematic meetings** could be considered where for instance child labour or the environmental impact of extractive industries are discussed.

10. **The EU should be MORE ASSERTIVE to enforce the agreement**

Even though the EU prefers a cooperative approach, it should take a stronger stand to **make sure that civil society meetings in the partner country are effectively established**.

For now the EU is insufficiently following up on the existence and functioning of the civil society meetings in the partner countries. This is especially evident in the case of Peru. The text of this trade agreement does not allow the EU, or the members of the EU domestic meeting, to be informed about the composition and agenda of the Peruvian meeting domestic group. As the Peruvian government is reluctant to share information on its domestic meetings, it is difficult for the EU to know whether Peru is complying with its treaty commitments. At the same time it complicates the efforts of European CSOs to engage with their counterparts in these third countries.

The EU could overcome this hurdle by being more assertive both in the trade agreement as well as in the implementation thereof. The civil society meetings are perhaps the most outstanding 'soft' aspect of the EU's approach. If the EU is really serious about its commitment to such an approach, pushing for these meetings is the least that can be expected.

However, the inconsistent approach to civil society across EU trade agreements, sets EU-ACP CSO engagement apart from the other new generation of EU trade agreements. This Briefing note has shown that there are clearer rules for engagements in the new generation of trade agreements – including provisions for domestic meetings and chapters for engagement on sustainable development – that were not included in the EU-CARIFORUM EPA and the three new African EPAs. Therefore, the question could

be asked, to what extent does this differentiation maintain a holistic ACP approach to trade and sustainable development, and to what extent can this be indicative of a holistic post-Cotonou approach to the ACP in general? What is clear is that this differentiated approach sets ACP group apart from other third country partners and in turn, reflects on a broader EU policy incoherency for development. As this Briefing note has suggested, **a more coherent approach to all third party CSOs in trade agreements could maximise the potential benefits for CSOs and the EU alike.**

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